TRIAL

Court File No: 619/90

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

BETWEEN:

GLAD DAY BOOKSHOP INC. and
JEARLD MOLDENHAUER

Appellants

- and -

DEPUTY MINISTER OF NATIONAL REVENUE FOR
CUSTOMS AND EXCISE

Respondent

FACTUM OF THE RESPONDENT DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE

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PART I - FACTS

1. Section 114 of the Customs Tariff, S.C. 1987, c.49 (the "Tariff") provides that the importation into Canada of any goods enumerated or referred to in Schedule VII of the Tariff is prohibited. Code 9956 of Schedule VII is comprised, in part, of books,

printed paper, drawings, paintings, prints, photographs or representations of any kind that are deemed to be obscene under s.163(8) of the Criminal Code.

Customs Tariff, S.C. 1987, c. 49, s. 114 and Section VII, Code 9956

2. Section 163(8) of the Criminal Code provides that any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of crime, horror, cruelty and violence, shall be deemed to be obscene. Custom Memorandum D9-1-1 sets out the interpretive policy and procedures for the administration of Tariff code 9956 by its officials.

Criminal Code, s. 163(8)

Memorandum D9-1-1

3. Section 58(1) of the Customs Act, S.C. 1986, c.1 (the "Act") provides, in part, that an officer may determine the tariff classification of imported goods at any time before, or within 30 days after, the time they are accounted for.

Customs Act, S.C. 1986, c. 1, s. 58(1)

4. Pursuant to s.60 of the Act, the importer may, within 90 days after the officer's determination, request a re-determination of the tariff classification from a designated officer, who shall make the re-determination with all due dispatch.

Customs Act, S.C. 1986, c. 1, s. 60

5. Pursuant to s. 63 of the Act any person may, within 90 days after being given notice of a re-determination under s.60 request a further re-determination of the tariff classification, which shall be made by the Deputy Minister of National Revenue for Customs and Excise (the "Deputy Minister") with all due dispatch.

Customs Act, S.C. 1986, c. 1, s. 63

6. Sections 67(1) and 71 of the Act provide that a person who deems himself aggrieved by a further re-determination made by the Deputy Minister may appeal that decision to the Ontario Court of Justice (General Division) by filing a notice of appeal within 90 days after notice of the decision was given. Pursuant to s.68(1) of the Act the decision of the Ontario Court of Justice (General Division) may, with leave, be appealed to the Federal Court on any question of law.

Customs Act, S.C. 1986, c. 1, ss. 67(1) and 71

Oct 3 4 16 the seizures
Nov 14

Oct 16/89
Nov 1 & 20/89 1st determination

6 weeks

Jan 2/90 Request for a Redetermination

Jan 9/90 Redetermination

3 months

Apr 4/90 Glad Day
Requests Redetermination

July 16/90 Dep. Minister decides

3 months

Oct 18/ Glad Day appeals to Court

7. On October 3, 4 and 16, and November 14, 1989 Customs officials detained five shipments containing copies of 9 publications imported by the Appellants Glad Day Bookshop Inc. and Jearld Moldenhauer (collectively referred to as "Glad Day"). The publications were entitled "Sex Stops Vol. 3", "Hot Tricks Vol. 5", "Movie Star Confidential", "Harry Chess", "Humongous Vol. 5", "Bear Issue No. 9", "Playguy December 1989", "In Touch No. 154", "Advocate Men November 1989" and "Oriental Guys No. 4".

Deputy Minister's Productions, Vol. I-II, Tabs 1-9

8. On October 16 and November 1 and 20, 1989 Customs officers made determinations pursuant to s.58 of the Act that importation of the publications into Canada was prohibited because they were classified as obscene under code 9956 of Schedule VII to the Tariff. On January 2, 1990 Glad Day requested re-determinations pursuant to s.60 of the Act. These requests were received by Customs officials on January 3, 1990.

Deputy Minister's Productions, Vol. III

9. On January 9, 1990 a Tariff and Values Administrator made re-determinations under s.60 of the Act that the publications were obscene and prohibited importation into Canada under Tariff Code 9956. Glad Day requested further re-

determinations under s.63 of the Act on April 4, 1990. These requests were received by Customs officials on April 20, 1990.

Deputy Minister's Productions, Vol. III

10. On July 16, 1990 the Deputy Minister made her decision classifying the publications as obscene under code 9956 of the Tariff, and thereby confirming that importation of the publications into Canada is prohibited.

Deputy Minister's Productions, Vol. III

11. On October 18, 1990 Glad Day launched this appeal under s. 67(1) of the Act by way of Notice of Appeal of the Deputy Minister's decision. On November 5, 1990 the Deputy Minister filed her Notice of Appearance on this appeal.

Deputy Minister's Productions, Vol. III

12. In addition to this appeal, Glad Day filed two other Notices of Appeal pursuant to s. 67(1) of the Act with respect to decisions of the Deputy Minister classifying publications as obscene under Code 9956 of the Tariff, and prohibiting entry into Canada. The two Notices of Appeal, which were assigned Court file numbers 78-90 and 323-90 and raised similar grounds to those advanced in this appeal will not be proceeding. On

October 30, 1989 Glad Day also commenced an action in the Federal Court Trial Division concerning the publications which were classified as obscene and prohibited entry into Canada. The issue of whether detention of the publications constitutes an unreasonable violation of Glad Day's freedom of expression contrary to s. 2(b) of the Canadian Charter of Rights and Freedoms (the "Charter") was raised in the Federal Court action, which has since been discontinued.

13. On March 24, 1992 Glad Day brought a motion for an order declaring this appeal to be governed by the procedural rules applicable to criminal proceedings. The Deputy Minister brought a cross-motion, which was heard on the same day, for directions requiring that the hearing proceed in accordance with the rules applicable to civil proceedings.

> **Glad Day Bookshop Inc. v. Deputy Minister of National Revenue for Customs and Excise, unreported, released April 8, 1992 (O.C.G.D.)**

14. On April 8, 1992 Madam Justice Chapnik's reasons were released, wherein she held that:

> . . . To require proof of obscenity beyond a reasonable doubt in such circumstances where no charges have been laid, would . . . place undue hardship upon the Crown . . . In all the circumstances, I would suggest that the intention of the legislature in developing and implementing its administrative scheme, including an appeal to this court, was for the standard of proof to be on a balance of probabilities. Upon a careful review of the

> legislation, I am satisfied that it was not intended that the Crown should bear the burden of proving grounds for prohibiting the importation of goods beyond a reasonable doubt.

Glad Day, supra, at p. 14

15. As for the issue of pre-trial disclosure, Chapnik J. held that ". . . the usual civil procedure rules were not meant to apply to this type of hearing" (p. 15). Instead, the Deputy Minister was ordered to provide a summary of evidence relied on to prove the importation of the goods and their classification as obscene, a list of witnesses and a summary of their evidence, and an affidavit on production by April 21, 1992. Glad Day was ordered to provide a summary of its argument in response and an affidavit on production by April 30, 1992. Chapnik J. also ordered that "[f]actums shall be provided to the court in accordance with the Rules of Civil Procedure" (p. 16).

Glad Day, supra, at pp. 15-16

PART II - THE ISSUES

16. The issue before this Court is whether the Deputy Minister's determination that the publications are obscene is correct.

Customs Act, S.C. 1986, c. 1, ss. 67(1) and 71

17. Glad Day also alleges in its Notice of Appeal that its rights pursuant to s. 2(b) of the Charter have been violated.

Deputy Minister's Productions, Vol. III, Tab

PART III - THE LAW

A. OBSCENITY

18. In Butler v. The Queen, the Supreme Court of Canada distilled the test for what is obscene within the meaning of s. 163(8) of the Criminal Code as follows:

> The courts must determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure. Harm in this context means that it predisposes persons to act in an anti-social manner as, for example, the physical or mental mistreatment of women by men, or, what is perhaps debatable, the reverse. Anti-social conduct for this purpose is conduct which society formally recognizes as incompatible with its proper functioning. The stronger the inference of a risk of harm the lesser the likelihood of tolerance. The inference may be drawn from the material itself or from the material and other evidence. Similarly evidence as to the community standards is desirable but not essential.
>
> In making this determination with respect to the three categories of pornography referred to above, the portrayal of sex coupled with violence will almost always constitute the undue exploitation of sex. Explicit sex which is degrading or dehumanizing may be undue if the risk of harm is substantial. Finally, explicit sex that is not violent and neither degrading nor dehumanizing is generally tolerated in our society and will not qualify as the undue exploitation of sex unless it employs children in its production.

> If material is not obscene under this framework, it does not become so by reason of the person to whom it is or may be shown or exposed nor by reason of the place or manner in which it is shown. . . .

Butler v. The Queen, unreported, released February 27, 1992 (S.C.C.), per Sopinka J. at pp. 31-32

19. The Court had the following to say with respect to arguments regarding artistic merit:

> . . . How does the "internal necessities" test fit into this scheme? The need to apply this test only arises if a work contains sexually explicit material that by itself would constitute the undue exploitation of sex. The portrayal of sex must then be viewed in context to determine whether that is the dominant theme of the work as a whole. Put another way, is undue exploitation of sex the main object of the work or is this portrayal of sex essential to a wider artistic, literary, or other similar purpose? . . . The court must determine whether the sexually explicit material when viewed in the context of the whole work would be tolerated by the community as a whole. . . .

Butler, supra, per Sopinka J. at p. 33

20. Prior to Butler, several courts (including the Supreme Court of Canada) have considered material portraying explicit sex which is degrading or dehumanizing. The following passages taken from various judgments provide guidance as to what types of activity will be considered by a court to be degrading or dehumanizing.

Butler, supra, per Sopinka J. at pp. 24-27

21. In R. v. Doug Rankine Co., Ontario County Court Judge Borins had the following to say on this issue:

> Several of the films have scenes which couple violence and cruelty with sex. These scenes, such as scenes of bondage, frequently involve men perpetrating indignities on women in a sexual context. In my opinion many of the films are exploitive of women, portraying them as passive victims who derive limitless pleasure from inflicted pain and from subjugation to acts of violence, humiliation and degradation. Women are depicted as sexual objects whose only redeeming features are their genital and erotic zones, which are predominantly displayed in clinical detail. Whether deliberately or otherwise, most of the films portray degradation, humiliation, victimization and violence in human relationships as normal and acceptable behaviour.

R. v. Doug Rankine Co. (1983), 36 C.R. (3d) 154 (Ont. Co. Ct.)

22. Subsequently, in R. v. Ramsingh, Justice Ferg of the Manitoba Court of Queen's Bench adopted Judge Borins' reasoning, and added the following:

> The films . . . portray women in a most degrading way. They are exploited, portrayed as desiring pleasure from pain, by being humiliated and treated only as an object of male domination sexually, or in cruel or violent bondage. Women are portrayed in these films as pining away their lives waiting for a huge male penis to come along, on the person of a so-called sex therapist, or window washer, supposedly to transport them into complete sexual ecstasy. Or even more false and degrading one is led to believe their reason d'etre is to savour semen as a life elixir, or that they secretly desire to be forcefully taken by a male.
>
> . . . As well, I think that where violence is portrayed with sex, or where there are people, particularly women, subjected to anything which degrades or dehumanizes them, the community standard is exceeded . . .

R. v. Ramsingh (1984), 14 C.C.C. (3d) 230 (Man. Q.B.) at pp. 239-240

23. Justice Shannon of Alberta's Court of Queen's Bench also considered degrading and dehumanizing material in R. v. Wagner:

> In sexually explicit pornography that is free of violence, but is degrading or dehumanizing, men and women are often verbally abused and portrayed as having animal characteristics. Women, particularly, are deprived of unique human character or identity and are depicted as sexual playthings, hysterically and instantly responsive to male sexual demands. They worship male genitals and their own value depends upon the quality of their genitals and breasts. Thus in such films professional women, such as nurses and secretaries, are hired solely for the purpose of sexual gratification, without regard for their professional qualifications and abilities.
>
> On the other hand, sexually explicit erotica portrays positive and affectionate human sexual interaction, between consenting individuals participating on a basis of equality. There is no aggression, force, rape, torture, verbal abuse or portrayal of humans as animals.

R. v. Wagner (1985), 43 C.R. (3d) 318 (Alta. Q.B.) at p. 331; appeal dismissed (1986), 50 C.R. (3d) 175 (Alta. C.A.)

24. In R. v. Red Hot Video Chief Justice Nemetz of the British Columbia Court of Appeal agreed with Shannon J., and found that ". . . such unduly exploitative films, even if devoid of acts of violence, degrade men and women by portraying them as having animal characteristics . . . this type of degrading vilification of women is unacceptable by any reasonable Canadian community standard." He concluded that the Criminal Code provision was demonstrably justified since ". . . the undue sexual exploitation of women

and children depicted in certain publications and films can, in certain circumstances, lead to abject and servile victimization."

> **R. v. Red Hot Video (1985), 45 C.R. (3d) 36 (B.C.C.A.) at pp. 43-44**

25. The Supreme Court of Canada had an opportunity to deal with this issue in Towne Cinema Theatres Ltd. v. R.:

> Sex-related publications which portray persons in a degrading manner as objects of violence, cruelty or other forms of dehumanizing treatment may be "undue" for the purpose of [s. 163(8)]. No one should be subject to the degradation and humiliation inherent in publications which link sex with violence, cruelty, and other forms of dehumanizing treatment. It is not likely that at a given moment in a society's history such publications will be tolerated.

> **Towne Cinema Theatres Ltd. v. R. (1985), 45 C.R. (3d) 1 (S.C.C.) per Dickson C.J.C. at p. 14**

26. In the same case, Madam Justice Wilson had the following to say:

> It seems to me that the undue exploitation of sex at which [s. 163(8)] is aimed is the treatment of sex which in some fundamental way dehumanizes the persons portrayed and, as a consequence, the viewers themselves. There is nothing wrong in the treatment of sex per se but there may be something wrong in the manner of its treatments. It may be presented brutally, salaciously and in a degrading manner, and would thus be dehumanizing and intolerable not only to the individuals or groups who are victimized by it but to society at large. On the other hand, it may be presented in a way which harms no one, in that it depicts nothing more than non-violent sexual activity in a manner which neither degrades nor dehumanizes any particular

> individuals or groups. It is this line between the mere portrayal of human sexual acts and the dehumanization of people that must be reflected in the definition of "undueness".
>
> . . . The problem is that we know so little of the consequences we are seeking to avoid. Do obscene movies spawn immoral conduct? Do they degrade women? Do they promote violence? The most that can be said, I think, is that the public has concluded that exposure to material which degrades the human dimensions of life to a subhuman or merely physical dimension and thereby contributes to a process of moral desensitization must be harmful in some way.

Towne Cinema, supra, per Wilson J. at pp. 29-30

27. In Butler the Supreme Court, in the course of reviewing general principles of the law on obscenity, stated that:

> . . . It is the standards of the community as a whole which must be considered and not the standards of a small segment of that community such as the university community where a film was shown . . . or a city where a picture was exposed . . . The standard to be applied is a national one.

Butler, supra, per Sopinka J. at p. 22

28. It is submitted that, although research on the effects of pornography has focused on heterosexual material and its impact on women and children, it can reasonably be assumed that what is degrading or dehumanizing in the heterosexual context will also be degrading or dehumanizing among homosexuals.

B. CHARTER SECTION 2(b)

29. Section 2(b) of the Charter provides, in part, that everyone has freedom of thought, belief, opinion and expression. In Butler, the Supreme Court of Canada held that:

> Meaning sought to be expressed need not be "redeeming" in the eyes of the court to merit the protection of s. 2(b) whose purpose is to ensure that thoughts and feelings may be conveyed freely in non-violent ways without fear of censure.
>
> In this case, both the purpose and effect of s. 163 is specifically to restrict the communication of certain types of materials based on their content . . . there is no doubt that s. 163 seeks to prohibit certain types of expressive activity and thereby infringes s. 2(b) of the Charter.

Butler, supra, per Sopinka J. at pp. 36-37

See also Luscher v. Deputy Minister, Revenue Canada, Customs and Excise (1985), 45 C.R. (3d) 81 (F.C.A.)

30. The Tariff incorporates by reference the Criminal Code definition of obscenity found in s. 163(8). The purpose and effect of s. 114 and Code 9956 of Schedule VII to the Tariff is to prohibit entry into Canada of certain goods because of their content. It is therefore conceded that these provisions infringe s. 2(b) of the Charter.

31. However, it is submitted that the impugned provisions constitute a reasonable limit on s. 2(b) rights which is prescribed by law and is demonstrably justified in a free and democratic society within the meaning of s. 1 of the Charter. The Criminal Code definition of obscenity provides an intelligible standard, and the threshold test for application of s. 1 is therefore met.

Butler, supra, per Sopinka J. at p. 40

See also Luscher, supra, at pp. 88-90

32. As with the Criminal Code obscenity provision, the objective of the impugned provisions is to protect society from the harm associated with exposure to obscene materials. The Supreme Court held in Butler that this is a sufficiently pressing and substantial objective to warrant restricting freedom of expression.

Butler, supra, per Sopinka J. at pp. 40-49

33. The impugned provisions must also satisfy the three aspects of the proportionality requirement in that there must be:

(a) a rational connection between the objective and the impugned provisions;

(b) minimal impairment of freedom of expression; and

(c) a proper balance between the effects of the limiting measures and the objective.

The Court in Butler held that pornography "does not stand on equal footing with other kinds of expression which directly engage the "core" of the freedom of expression value," and that "an economic motive for expression means that restrictions on the expression might be easier to justify than other infringements."

Butler, supra, per Sopinka J. at pp. 51-52

34. Although there is controversy in the social sciences regarding the casual relationship between obscenity and the risk of harm to society, the Court in Butler concluded that "it is reasonable to presume that exposure to images bears a causal relationship to changes in attitudes and beliefs." It was held that Parliament could reasonably have concluded that there was a connection between obscene material and antisocial behaviour, and that there was a rational link between the criminal sanction on distribution of obscene material and the objective of protecting society from harm. It is submitted that, similarly, there is a rational connection between the objective of protecting society from harm flowing from exposure to obscene material and the impugned provisions which prohibit importation of such material into Canada.

Butler, supra, per Sopinka J. at pp. 52-56

35. In Butler, the Supreme Court held that there was minimal impairment of freedom of expression for the following reasons:

(a) s. 163 of the Criminal Code does not proscribe all sexually explicit erotica which is neither violent nor degrading or dehumanizing;

(b) s. 163 does not proscribe material which has scientific, artistic or literary merit;

(c) past attempts by Parliament to pass a more precise definition of obscenity have failed;

(d) s. 163 does not extend to the private use of obscene materials; and

(e) the Charter does not require that Parliament choose between proscribing obscene material and other complementary measures, such as education, to achieve its objective.

Butler, supra, per Sopinka J. at pp. 56-61

36. It is submitted that all of these factors, with the exception of (d), apply equally to the impugned provisions in this case. It is further submitted that the existence

of concurrent, complimentary mechanisms for dealing with obscene material does not make the impugned provisions any less justifiable. That is, the existence of Criminal Code sanctions on obscene material does not mean that border control of obscene material under the Tariff cannot be justified under s. 1 of the Charter.

R. v. Simmons (1988), 55 D.L.R. (4th) 673 (S.C.C.)

37. The Supreme Court held in Butler that the restriction on freedom of expression does not outweigh the importance of the legislative objective, since the type of expression was not within the core value of freedom of expression and was primarily economically motivated, while the objective of enhancing respect for all members of society is of fundamental importance in a free and democratic society. It is submitted that these factors are equally relevant to this case, and that they support a finding that the requirements of s. 1 of the Charter have been met.

Butler, supra, per Sopinka J. at p. 62

38. It is submitted that the differing standard of proof and the procedural requirements which apply to a Criminal Code obscenity charge have no bearing on the constitutional validity of the impugned provisions under the Tariff. When goods are determined to be obscene under the Tariff, no one is charged with an offence, and the

liberty of the individual is not at stake. Indeed, "it is the books which are on trial, not the person."

> **Re Winkler and Deputy Minister of National Revenue for Customs and Excise (1973), 15 C.C.C. (2d) 168 (Ont. Co. Ct.) at p. 174**
>
> **Glad Day, supra, at p. 9**
>
> **R. v. Morin, unreported, released March 26, 1992 (S.C.C.)**
>
> **Akthar v. Minister of Employment and Immigration, [1991] 3 F.C. 32 (C.A.)**

39. Glad Day submits that the delay inherent in the determination and appeal process set out in the Customs Act is excessive, and constitutes a per se violation of s. 2(b) of the Charter. Glad Day seeks to import into Canadian jurisprudence principles developed by American Courts requiring a speedy judicial determination of whether goods are obscene when prior restraint is imposed by an administrative agency. For example, in the customs area, judicial proceedings must be commenced within 14 days of seizure of goods alleged to be obscene, and a final judicial determination must be made no more than 60 days later.

> **Roth v. United States (1957), 354 U.S. 476**
>
> **Freedman v. Maryland (1965), 380 U.S. 51**
>
> **United States v. Thirty-Seven Photographs (1971), 402 U.S. 363**

good reason why the
determination doesn't
have to be by an
official judge

40. While American jurisprudence may be of assistance in interpreting various provisions of the Charter, the Supreme Court of Canada has firmly declined to be bound by it. It is submitted that transposing the time frames imposed by the United States Supreme Court on its Customs authorities into Canada is wholly inappropriate, given the differences between the American and Canadian Constitutions, and given that in the United States obscene material does not fall within the protection of the Bill of Rights.

Roth v. United States, supra

41. The American Constitution is theoretically based on a strict division of powers between the judicial, executive and legislative branches of government. Judicial powers are vested in Article III courts, which are independent from political pressures, and Congress may not delegate its legislative power to the executive branch. In contrast, the Canadian Constitution does not establish a strict division of powers between the three branches of government, and there is no impediment, other than s. 96 of the 1867 Constitution, to Parliament or the Legislatures conferring judicial decision-making authority on bodies other than the courts.

K.C. Davis, Administrative Law Treatise, 2d ed., Vol. 4 (San Diego, California: K.C. Davis, 1983) at p. 434

"The Authority of Administrative Agencies to Consider the Constitutionality of Statutes" (1977), Harv. L. Rev. 1682

P.W. Hogg, Constitutional Law of Canada, 2d ed. (Toronto: Carswell, 1985) at pp. 150-151

42. Nowhere are these differences more apparent than in cases dealing with the jurisdiction of administrative tribunals to decide constitutional challenges. In the United States, administrative agencies are not permitted to invalidate statutes which are alleged to violate the Bill of Rights, since such powers are specifically reserved to Article III courts. Conversely, in Canada, an administrative tribunal can decide whether a provision of its constituent legislation violates the Charter, provided that it has jurisdiction conferred by statute over the parties and the subject matter, as well as authority to grant the remedy sought.

Douglas/Kwantlen Faculty Association v. Douglas College (1990), 77 D.L.R. (4th) 94 (S.C.C.)

K.C. Davis, supra, at p. 434

43. It is submitted that it was this strict division of powers in the American Constitution, and the resulting inability of administrative bodies to decide constitutional issues, combined with the exclusion of obscene material from constitutional protection, that led the United States Supreme Court to conclude that Customs officials must seek a speedy judicial determination of whether detained materials are obscene. Since these pre-

conditions do not exist in Canada, it is wholly inappropriate to impose the same requirements on Canadian Customs officials.

44. Glad Day has referred to s. 15 of the Charter in its argument. In order to determine whether there has been a breach of rights under s. 15, the court must answer the following questions:

(a) has Glad Day been denied one of the four basic rights set out in s. 15; that is, the rights of equality before and under the law, and the rights of equal protection and equal benefit of the law; and

(b) was this differential treatment discriminatory in that:

- there is a distinction, whether intentional or not, which is based on a ground that is either enumerated in s. 15(1), or analogous to the listed grounds, and

- the distinction has the effect of imposing burdens, obligations or disadvantages on the individual or groups not imposed on others, or

> of withholding or limiting access to opportunities, benefits or advantages available to other members of society.

Egan and Nesbit v. The Queen, unreported, released December 2, 1991 (F.C.T.D.)

45. It is submitted that Glad Day has failed to satisfy any portion of the test under s. 15 of the Charter, and that its claim insofar as it is based on this provision should be dismissed.

46. Appeals pursuant to ss. 67(1) and 71 of the Act proceed by way of trial de novo, with evidence regarding the prohibited materials being presented as if this were a court of first instance. However, the result is an appellate decision either upholding or overturning the Deputy Minister's redetermination.

Re Winkler, supra, at p. 174

Customs Act, S.C. 1986, c. 1, ss. 67(1) and 71

47. Careful preparation and presentation of a factual basis is essential to decisions on Charter issues, since they will profoundly affect Canadian lives. For example,

an informal procedure which is adopted before a trial judge will not provide an adequate evidentiary foundation upon which to base a Charter decision.

R. v. L. (W.K.) (1991), 64 C.C.C. (3d) 321 (S.C.C.)

MacKay v. Manitoba (1989), 61 D.L.R. (4th) 385 (S.C.C.)

48. It is submitted that this is not an appropriate case in which to make a ruling under the Charter which may have a widespread impact. No pleadings have been exchanged, no discoveries have been held, and the parties have been required to make only limited disclosure of their cases prior to the hearing. It is further submitted that Glad Day is free to bring an action claiming relief under the Charter (and, indeed, did exactly that in the discontinued Federal Court action).

Glad Day, supra

PART IV - ORDER SOUGHT

49. It is respectfully submitted that this appeal be dismissed with costs, and that the Deputy Minister's decision be upheld.

Dated at Toronto, this 8th day of May, 1992.

Paul J. Evraire, Q.C.
Per:

DM McAllister

Debra M. McAllister

Paul J. Evraire, Q.C.
Per:

Rhea M. J. Hoare

Rhea M.J. Hoare

Of Counsel for the Respondent

SCHEDULE "A"

AUTHORITIES

1. Glad Day Bookshop Inc. v. Deputy Minister of National Revenue for Customs and Excise, unreported, released April 8, 1992 (O.C.G.D.)

2. Butler v. The Queen, unreported, released February 27, 1992 (S.C.C.), at pp. 31-32

3. R. v. Doug Rankine Co. (1983), 36 C.R. (3d) 154 (Ont. Co. Ct.)

4. R. v. Ramsingh (1984), 14 C.C.C. (3d) 230 (Man. Q.B.) at pp. 239-240

5. R. v. Wagner (1985), 43 C.R. (3d) 318 (Alta. Q.B.) at p. 331; appeal dismissed (1986), 50 C.R. (3d) 175 (Alta. C.A.)

6. R. v. Red Hot Video (1985), 45 C.R. (3d) 36 (B.C.C.A.) at pp. 43-44

7. Towne Cinema Theatres Ltd. v. R. (1985), 45 C.R. (3d) 1 (S.C.C.) at p. 14

8. Luscher v. Deputy Minister, Revenue Canada, Customs and Excise (1985), 45 C.R. (3d) 81 (F.C.A.)

9. R. v. Simmons (1988), 55 D.L.R. (4th) 673 (S.C.C.)

10. Re Winkler and Deputy Minister of National Revenue for Customs and Excise (1973), 15 C.C.C. (2d) 168 (Ont. Co. Ct.) at p. 174

11. R. v. Morin, unreported, released March 26, 1992 (S.C.C.)

12. Akthar v. Minister of Employment and Immigration, [1991] 3 F.C. 32 (C.A.)

13. Roth v. United States (1957), 354 U.S. 476

14. Freedman v. Maryland (1965), 380 U.S. 51

15. United States v. Thirty-Seven Photographs (1971), 402 U.S. 363

16. K.C. Davis, Administrative Law Treatise, 2d ed., Vol. 4 (San Diego, California: K.C. Davis, 1983) at p. 434

17. "The Authority of Administrative Agencies to Consider the Constitutionality of Statutes" (1977), Harv. L. Rev. 1682

18. P.W. Hogg, Constitutional Law of Canada, 2d ed. (Toronto: Carswell, 1985) at pp. 150-151

19. Douglas/Kwantlen Faculty Association v. Douglas College (1990), 77 D.L.R. (4th) 94 (S.C.C.)

20. Egan and Nesbit v. The Queen, unreported, released December 2, 1991 (F.C.T.D.)

21. R. v. L. (W.K.) (1991), 64 C.C.C. (3d) 321 (S.C.C.)

22. MacKay v. Manitoba (1989), 61 D.L.R. (4th) 385 (S.C.C.)

SCHEDULE "B"

STATUTES

1. **Customs Tariff, S.C. 1987, c. 49, s. 114 and Section VII, Code 9956**
2. **Criminal Code, s. 163(8)**
3. **Memorandum D9-1-1**
4. **Customs Act, S.C. 1986, c. 1, ss. 58(1), 60, 63, 67(1), 71**

Customs Tariff, S.C. 1987, c. 49, s. 114 and section VII, Code 9956

(i) destroy, alter, mutilate, secrete or dispose of records or books of account,

(ii) make, or participate in, assent to or acquiesce in the making of, false or deceptive entries in records or books of account, or

(iii) omit, or participate in, assent to or acquiesce in the omission of, a material particular from records or books of account.

ffence and punishment

(2) Every person who contravenes subsection (1)

(*a*) is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for a term not exceeding six months or to both; or

(*b*) is guilty of an indictable offence and liable to a fine of not more than twenty-five thousand dollars and not less than two hundred dollars or to imprisonment for a term not exceeding five years or to both.

Officers, etc., of c orations

112. Where a corporation commits an offence under this Part, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

imitation riod in m ry n ion

113. Proceedings may be instituted by way of summary conviction in respect of an offence under this Part within but not later than three years after the time when the subject-matter of the proceedings arose.

PART III

PROHIBITED GOODS

r ion ibited

114. The importation into Canada of any goods enumerated or referred to in Schedule VII is prohibited.

(i) de détruire, modifier, mutiler ou dissimuler des documents comptables, ou de s'en départir,

(ii) de faire des inscriptions fausses ou trompeuses dans des documents comptables, d'y participer ou d'y consentir,

(iii) d'omettre une inscription importante dans un document comptable, ou de participer ou consentir à l'omission.

(2) Toute personne qui contrevient au paragraphe (1) encourt, sur déclaration de culpabilité :

Infractions et peines

a) par procédure sommaire, une amende maximale de deux mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines;

b) par mise en accusation, une amende maximale de vingt-cinq mille dollars et minimale de deux cents dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

112. En cas de perpétration par une personne morale d'une infraction à la présente partie, ceux de ses dirigeants, administrateurs ou mandataires qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et encourent la peine prévue, que la personne morale ait été ou non poursuivie ou déclarée coupable.

Dirigeants de personnes morales

113. Les poursuites par procédure sommaire visant des infractions à la présente partie ou des infractions prévues par elle se prescrivent par trois ans à compter de leur perpétration.

Prescription

PARTIE III

MARCHANDISES PROHIBÉES

114. L'importation au Canada des marchandises dénommées ou visées à l'annexe VII est prohibée.

Importation prohibée

SCHEDULES

ANNEXES

SCHEDULES I TO VII

[Note: As to Schedules I to VII, *see* subsection 138(1)]

SCHEDULE VIII

(*Subsection 138(2)*)

Provision Affected	Enactment Referred to in Provision	The Reference is Amended to Read
Schedule II, para. b) preceding Code 1750	Schedule B to the *Financial Administration Act*	Schedule II to the *Financial Administration Act*
Schedule II, subpara. (a)(ii) preceding Code 1760	Schedule B to the *Financial Administration Act*	Schedule II to the *Financial Administration Act*
Schedule VII, Code 9956, para. (*a*)	Subsection 159(8) of the *Criminal Code*	Subsection 163(8) of the *Criminal Code*
Idem, para. (*b*)	Subsection 281.3(8) of the *Criminal Code*	Subsection 320(8) of the *Criminal Code*
Idem, para. (*d*)	Sections 60 and 61 of the *Criminal Code*	Sections 59 and 60 of the *Criminal Code*
Schedule VII, Code 9965, para. (*b*) preceding subpara. (i)	Part II.1 of the *Criminal Code*	Part III of the *Criminal Code*
Idem, subpara. (*b*)(i)	Subsection 106.2(3), Part II.1 and subsection 106.2(4) of the *Criminal Code*	Subsection 110(3), Part III and subsection 110(4) of the *Criminal Code*
Idem, subpara. (*b*)(ii)	Subsection 106.2(3) of the *Criminal Code*	Subsection 110(3) of the *Criminal Code*
Idem, para. (*c*)	Part II.1 of the *Criminal Code*	Part III of the *Criminal Code*
Idem, para. (*d*)	Part II.1 and subsection 106.2(5) of the *Criminal Code*	Part III and subsection 110(5) of the *Criminal Code*
Idem, para. (*e*)	Section 96 of the *Criminal Code*	Section 98 of the *Criminal Code*
Idem, para. (*f*)	Subsection 82(2) of the *Criminal Code*	Subsection 84(2) of the *Criminal Code*

ANNEXES I À VII

[Note : Pour les annexes I à VII, *voir* paragraphe 138(1)]

ANNEXE VIII

(*paragraphe 138(2)*)

Disposition concernée	Texte mentionné dans la disposition	Modification
Annexe II, al. (b) précédant le code 1750	annexe B de la *Loi sur l'administration financière*	annexe II de la *Loi sur la gestion des finances publiques*
Annexe II, sous-al. (a)(ii) précédant le code 1760	annexe B de la *Loi sur l'administration financière*	annexe II de la *Loi sur la gestion des finances publiques*
Annexe VII, code 9956, al. *a*)	paragraphe 159(8) du *Code criminel*	paragraphe 163(8) du *Code criminel*
Idem, al. *b*)	paragraphe 281.3(8) du *Code criminel*	paragraphe 320(8) du *Code criminel*
Idem, al. *d*)	articles 60 et 61 du *Code criminel*	articles 59 et 60 du *Code criminel*
Annexe VII, code 9965, al. *b*) qui précède le sous-al. (i)	partie II.1 du *Code criminel*	partie III du *Code criminel*
Idem, sous-al. *b*)(i)	paragraphe 106.2(3), partie II.1 et paragraphe 106.2(4) du *Code criminel*	paragraphe 110(3), partie III et paragraphe 110(4) du *Code criminel*
Idem, sous-al. *b*)(ii)	paragraphe 106.2(3) du *Code criminel*	paragraphe 110(3) du *Code criminel*
Idem, al. *c*)	partie II.1 du *Code criminel*	partie III du *Code criminel*
Idem, al. *d*)	partie II.1 et paragraphe 106.2(5) du *Code criminel*	partie III et paragraphe 110(5) du *Code criminel*
Idem, al. *e*)	article 96 du *Code criminel*	article 98 du *Code criminel*
Idem, al. *f*)	paragraphe 82(2) du *Code criminel*	paragraphe 84(2) du *Code criminel*

QUEEN'S PRINTER FOR CANADA © IMPRIMEUR DE LA REINE POUR LE CANADA
OTTAWA, 1989.

PROHIBITED GOODS — SCHEDULE VII

(Section 114)

† **9950** Any live specimen of the mongoose family, including Galidia, Galidictis, Mungotictis, Salanoia, Suricata, Herpestes, Helogale, Donogale, Atilax, Mungos, Crossarchus, Liberiictics, Ichneumia, Bdeogale, Rhynchogale, Cynictis, Paracynictis, and Cryptoprocta except if the Minister is satisfied, in accordance with the written advice of the Canadian Wildlife Service, that the specimen is for breeding, study or exhibition purposes, in confinement by zoological institutions approved by the Canadian Wildlife Service.

9951 1 Any live bird of the Starling family (Sturnidae), except:
- *(a)* the European Starling (Sturnus vulgaris) and the Chinese Talking or Hill Mynah (Gracula religiosa),
- *(b)* Rothschilds or Bali Mynah (Leucopsar rothschildi) for propagation purposes

2. Any other non-game bird, except any of the following
- *(a)* a domestic bird of a kind kept for food purposes;
- *(b)* a bird intended solely for exhibition in a public zoological park;
- *(c)* a bird intended solely to be kept in confinement in a cage or to be used for purposes of public entertainment

9952 Aigrettes, egret plumes or so-called osprey plumes, and the feathers, quills, heads, wings, tails, skins or parts of skins of wild birds either raw or manufactured, but excluding:
- *(a)* the feathers or plumes of ostriches; the plumage of the English pheasant, the Indian peacock, birds imported alive, and of wild birds of groups recognized as game birds in any Canadian game law and for which an open season is provided thereunder,
- *(b)* specimens imported, in accordance with regulations that the Minister may make, for any museum or for scientific or educational purposes.

9953 Coin, base or counterfeit

9954 Oleomargarine, butterine or other similar substitutes for butter, and process butter or renovated butter, unless in any case or class of cases exempted from the provisions of this code, in accordance with regulations that the Governor in Council may make.

9955 Used or second-hand mattresses or materials therefrom, but this code does not affect in any manner,
- *(a)* mattresses imported under tariff item No. 9806.00.00, 9807.00.00, 9808.00.00, 9809.00.00 or 9810.00.00,
- *(b)* materials from used or second-hand mattresses, when imported after having been cleaned and fumigated, in accordance with regulations that the Minister may make, accompanied by such certificates as the Minister may designate.

9956 Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that
- *(a)* are deemed to be obscene under subsection 159(8) of the *Criminal Code*,
- *(b)* constitute hate propaganda within the meaning of subsection 281.3(8) of the *Criminal Code*,
- † *(c)* are of a treasonable character within the meaning of section 46 of the *Criminal Code*; or
- *(d)* are of a seditious character within the meaning of sections 60 and 61 of the *Criminal Code*.

9957 Posters and handbills depicting scenes of crime or violence.

9958 For the purposes of this code
- *(a)* "issue" includes a special annual issue, and
- *(b)* "periodical" means a periodical, the issues of which, other than special annual issues, are published at regular intervals of more than six days and less than fifteen weeks and are distributed as issues of a distinct publication or as a supplement to more than one newspaper, but does not include
  - (i) a catalogue,
  - (ii) a newspaper, or
  - (iii) a periodical, the principal function of which is the encouragement, promotion or development of the fine arts, letters scholarship or religion

1. Issues of a periodical, one of the four immediately preceding issues of which has, under regulations that the Governor in Council may make, been found to be an issue of a special edition, including a split run or a regional edition, that contained an advertisement that

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† Pending passage of the Ways and Means Motion tabled in Parliament by the Minister of Finance April 27 1989 accounting documents for goods affected by the change to this code will be accepted subject to amendment

Code | Prohibited Goods

was primarily directed to a market in Canada and that did not appear in identical form in all editions of that issue of that periodical that were distributed in the country of origin

2 Issues of a periodical, one of the four immediately preceding issues of which has, under regulations that the Governor in Council may make, been found to be an issue, more than five per cent of the advertising space in which consisted of space used for advertisements that indicated specific sources of availability in Canada, or specific terms or conditions relating to the sale or provision in Canada, of any goods or services, except where the indication of such sources of availability or such terms or conditions was primarily directed to persons outside Canada.

For the purposes of this section:

(a) "periodical" does not include a periodical dated after the coming into force of paragraph 19(1)(b) of the *Income Tax Act* that would be a Canadian issue of a Canadian periodical except that its type has either been wholly set in the United States or has been partly set in the United States with the remainder having been set in Canada, or except that it has been wholly printed in the United States or has been printed partly in the United States with the remainder have been printed in Canada; and

(b) any term or expression used in paragraph (a) has the same meaning as in section 19 of the *Income Tax Act*.

9959 Reprints of Canadian copyrighted works, and reprints of British copyrighted works which have been copyrighted in Canada.

9960 Goods manufactured or produced wholly or in part by prison labour, unless in any case or class of cases exempted from the provisions of this code in accordance with regulations that the Governor in Council may make.

9961 Smoke screen apparatus, for use on motor vehicles or on vessels of Chapter 89

9962 Metallic trading checks in circular form, unless in any case or class of cases exempted from the provisions of this code in accordance with regulations that the Governor in Council may make.

9963 Used or second-hand motor vehicles of all kinds, manufactured prior to the calendar year in which importation into Canada is sought to be made, but not including motor vehicles:

(a) imported under tariff item No. 9801.00.00, 9807.00.00, 9808.00.00, 9809.00.00 or 9810.00.00;
(b) imported by a settler on the settler's first arrival but not entitled to be classified under tariff item No. 9807.00.00;
(c) forfeited or confiscated for any offence under the Customs laws, or the laws of any province of Canada,
(d) left by bequest,
(d.1) imported from the United States
  (i) at anytime in the 1989 calender year on or after the coming into force of this paragraph, where the motor vehicles are not less than eight years old,
  (ii) in the 1990 calender year, where the motor vehicles are not less than six year old,
  (iii) in the 1991 calender year, where the motor vehicles are not less than four years old,
  (iv) in the 1992 calender year, where the motor vehicles are not less than two years old, or
  (v) on or after January 1, 1993,
(e) exempted from the provisions of this code in accordance with regulations that the Governor in Council may make in any case or class of cases

9964 Used or second-hand aircraft of all kinds, but not including aircraft:

(a) classified under tariff item No. 9803.00.00, 9809.00.00 or 9810.00.00, civil aircraft of heading No. 88.01 or 88.02, or engaged solely in international traffic.
(b) forfeited or confiscated for any offence under the Customs laws, the *Air Regulations* or the laws of any province of Canada;
(c) imported by the Department of National Defence for military purposes;
(c.1) imported from the United States.

(*d*) exempted from the provisions of this code in accordance with regulations that the Governor in Council may make in any case or class of cases.

9965 Offensive weapons as defined in the *Criminal Code*, but this code does not affect in any manner:

(*a*) arms, ammunition, implements or munitions of war, army, naval or air stores, and any articles deemed capable of being converted thereinto or made useful in the production thereof, imported with a permit issued pursuant to section 8 of the *Export and Import Permits Act*;

(*b*) restricted weapons as defined for the purposes of Part II.1 of the *Criminal Code* imported by

(i) a person who is a resident of Canada who holds a permit issued to him under subsection 106.2(3) of that Act or a firearms acquisition certificate as defined for the purposes of Part II.1 of that Act and a permit issued to him under subsection 106.2(4) of that Act, or

(ii) a person who is not a resident of Canada and who holds a permit issued to him under subsection 106.2(3) of that Act;

(*c*) firearms other than prohibited or restricted weapons as defined for the purposes of Part II.1 of the *Criminal Code*, imported by a person who is not a resident of Canada or by a person who is resident of Canada, who acquired the firearms outside Canada and who holds a firearms acquisition certificate as defined for the purposes of Part II.1 of that Act;

(*d*) firearms, other than prohibited weapons as defined for the purposes of Part II.1 of the *Criminal Code*, and ammunition imported by a person holding a permit issued to that person under subsection 106.2(5) of that Act, under which that person is authorized to carry on a business;

(*e*) offensive weapons imported by a person referred to in section 96 of the *Criminal Code*;

(*f*) barrelled weapons that are deemed by subsection 82(2) of the *Criminal Code*, for the purposes of certain provisions of that Act enumerated in that subsection, not to be firearms;

(*g*) arms, military stores and munitions of war eligible for entry under tariff item No. 9810.00.00 or 9811.00.00; or

(*h*) arms, military stores, munitions of war or offensive weapons exempted from the provisions of this code in accordance with regulations that the Governor in Council may make in any case or class of cases.

9966 White phosphorus matches.

9967 Any goods, in association with which there is used any description that is false in a material respect as to the geographical origin of the goods or the importation of which is prohibited by an order under section 52 of the *Trade Marks Act*.

for a term not exceeding five years. R.S., c. C-34, s. 157.

Exception re acts in private between husband and wife or consenting adults

162. (1) Sections 160 and 161 do not apply to any act committed in private between

(*a*) a husband and his wife, or

(*b*) any two persons, each of whom is twenty-one years or more of age,

both of whom consent to the commission of the act.

Idem

(2) For the purposes of subsection (1),

(*a*) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present; and

(*b*) a person shall be deemed not to consent to the commission of an act

(i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations respecting the nature and quality of the act, or

(ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is, feeble-minded, insane or an idiot or imbecile. R.S., c. C-34, s. 158.

Offences Tending to Corrupt Morals

Corrupting morals

163. (1) Every one commits an offence who

(*a*) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever; or

(*b*) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation a crime comic.

Idem

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

(*a*) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatever;

(*b*) publicly exhibits a disgusting object or an indecent show;

(*c*) offers to sell, advertises or publishes an advertisement of, or has for sale or disposal, any means, instructions, medicine, drug or

indécence avec une autre personne. S.R., ch. C-34, art. 157.

Exceptions concernant les actes de la vie privée entre conjoints ou entre adultes consentants

162. (1) Les articles 160 et 161 ne s'appliquent à aucun acte commis, dans l'intimité :

a) entre un mari et sa femme;

b) entre deux personnes, dont chacune est âgée de vingt et un ans ou plus,

qui consentent, tous les deux, à commettre l'acte.

Idem

(2) Pour l'application du paragraphe (1) :

a) un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public ou si plus de deux personnes y prennent part ou y assistent;

b) une personne est réputée ne pas consentir à commettre un acte dans les cas suivants :

(i) le consentement est extorqué par la force, par la menace ou la peur de lésions corporelles ou il est obtenu au moyen de représentations fausses ou trompeuses quant à la nature ou à la qualité de l'acte,

(ii) cette personne est simple d'esprit, aliénée, idiote ou imbécile et l'autre personne participant à l'acte le sait ou a de bonnes raisons de le croire. S.R., ch. C-34, art. 158.

Infractions tendant à corrompre les mœurs

Corruption des mœurs

163. (1) Commet une infraction quiconque, selon le cas :

a) produit, imprime, publie, distribue, met en circulation, ou a en sa possession aux fins de publier, distribuer ou mettre en circulation, quelque écrit, image, modèle, disque de phonographe ou autre chose obscène;

b) produit, imprime, publie, distribue, vend, ou a en sa possession aux fins de publier, distribuer ou mettre en circulation, une histoire illustrée de crime.

Idem

(2) Commet une infraction quiconque, sciemment et sans justification ni excuse légitime, selon le cas :

a) vend, expose à la vue du public, ou a en sa possession à une telle fin, quelque écrit, image, modèle, disque de phonographe ou autre chose obscène;

b) publiquement expose un objet révoltant ou montre un spectacle indécent;

c) offre en vente, annonce ou a, pour le vendre ou en disposer, quelque moyen, indi-

Criminal Code, R.S., c. C-34, ss.

for a term not exceeding five years. R.S., c. C-34, s. 157.

Exception re acts in private between husband and wife or consenting adults

162. (1) Sections 160 and 161 do not apply to any act committed in private between

(*a*) a husband and his wife, or

(*b*) any two persons, each of whom is twenty-one years or more of age,

both of whom consent to the commission of the act.

Idem

(2) For the purposes of subsection (1),

(*a*) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present; and

(*b*) a person shall be deemed not to consent to the commission of an act

(i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations respecting the nature and quality of the act, or

(ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is, feeble-minded, insane or an idiot or imbecile. R.S., c. C-34, s. 158.

Offences Tending to Corrupt Morals

Corrupting morals

163. (1) Every one commits an offence who

(*a*) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever; or

(*b*) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation a crime comic.

Idem

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

(*a*) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatever;

(*b*) publicly exhibits a disgusting object or an indecent show;

(*c*) offers to sell, advertises or publishes an advertisement of, or has for sale or disposal, any means, instructions, medicine, drug or

indécence avec une autre personne. S.R., ch. C-34, art. 157.

Exceptions concernant les actes de la vie privée entre conjoints ou entre adultes consentants

162. (1) Les articles 160 et 161 ne s'appliquent à aucun acte commis, dans l'intimité :

a) entre un mari et sa femme;

b) entre deux personnes, dont chacune est âgée de vingt et un ans ou plus,

qui consentent, tous les deux, à commettre l'acte.

Idem

(2) Pour l'application du paragraphe (1) :

a) un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public ou si plus de deux personnes y prennent part ou y assistent;

b) une personne est réputée ne pas consentir à commettre un acte dans les cas suivants :

(i) le consentement est extorqué par la force, par la menace ou la peur de lésions corporelles ou il est obtenu au moyen de représentations fausses ou trompeuses quant à la nature ou à la qualité de l'acte,

(ii) cette personne est simple d'esprit, aliénée, idiote ou imbécile et l'autre personne participant à l'acte le sait ou a de bonnes raisons de le croire. S.R., ch. C-34, art. 158.

Infractions tendant à corrompre les mœurs

Corruption des mœurs

163. (1) Commet une infraction quiconque, selon le cas :

a) produit, imprime, publie, distribue, met en circulation, ou a en sa possession aux fins de publier, distribuer ou mettre en circulation, quelque écrit, image, modèle, disque de phonographe ou autre chose obscène;

b) produit, imprime, publie, distribue, vend, ou a en sa possession aux fins de publier, distribuer ou mettre en circulation, une histoire illustrée de crime.

Idem

(2) Commet une infraction quiconque, sciemment et sans justification ni excuse légitime, selon le cas :

a) vend, expose à la vue du public, ou a en sa possession à une telle fin, quelque écrit, image, modèle, disque de phonographe ou autre chose obscène;

b) publiquement expose un objet révoltant ou montre un spectacle indécent;

c) offre en vente, annonce ou a, pour le vendre ou en disposer, quelque moyen, indiarticle intended or represented as a method of causing abortion or miscarriage; or

(*d*) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method for restoring sexual virility or curing venereal diseases or diseases of the generative organs.

Defence of public good

(3) No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.

Question of law and question of fact

(4) For the purposes of this section, it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served the public good, but it is a question of fact whether the acts did or did not extend beyond what served the public good.

Motives irrelevant

(5) For the purposes of this section, the motives of an accused are irrelevant.

Ignorance of nature no defence

(6) Where an accused is charged with an offence under subsection (1), the fact that the accused was ignorant of the nature or presence of the matter, picture, model, phonograph record, crime comic or other thing by means of or in relation to which the offence was committed is not a defence to the charge.

Definition of "crime comic"

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(*a*) the commission of crimes, real or fictitious; or

(*b*) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

Obscene publication

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely,

cation, médicament, drogue ou article destiné à provoquer un avortement ou une fausse couche, ou représenté comme un moyen de provoquer un avortement ou une fausse couche, ou fait paraître une telle annonce;

d) annonce quelque moyen, indication, médicament, drogue ou article ayant pour objet, ou représenté comme un moyen de rétablir la virilité sexuelle, ou de guérir des maladies vénériennes ou maladies des organes génitaux, ou en publie une annonce.

Défense port sur le bien public

(3) Nul ne peut être déclaré coupable d'une infraction aux termes du présent article s'il établit que les actes qui constitueraient l'infraction ont servi le bien public et n'ont pas outrepassé ce qui a servi le bien public.

Question de droit et question de fa

(4) Pour l'application du présent article, la question de savoir si un acte a servi le bien public et s'il y a preuve que l'acte allégué a outrepassé ce qui a servi le bien public est une question de droit, mais celle de savoir si les actes ont ou n'ont pas outrepassé ce qui a servi le bien public est une question de fait.

Motifs non pertinents

(5) Pour l'application du présent article, les motifs d'un prévenu ne sont pas pertinents.

L'ignorance ne constitue pas une défense

(6) Lorsqu'un prévenu est inculpé d'une infraction visée par le paragraphe (1), le fait qu'il ignorait la nature ou la présence de la matière, de l'image, du modèle, du disque de phonographe, de l'histoire illustrée de crime ou de l'autre chose au moyen ou à l'égard de laquelle l'infraction a été commise, ne constitue pas une défense contre l'inculpation.

Définition de «histoire illustrée de crime»

(7) Au présent article, «histoire illustrée de crime» s'entend d'un magazine, périodique ou livre comprenant, exclusivement ou pour une grande part, de la matière qui représente, au moyen d'illustrations :

a) soit la perpétration de crimes, réels ou fictifs;

b) soit des événements se rattachant à la perpétration de crimes, réels ou fictifs, qui ont lieu avant ou après la perpétration du crime.

Publication obscène

(8) Pour l'application de la présente loi, est réputée obscène toute publication dont une caractéristique dominante est l'exploitation indue des choses sexuelles, ou de choses sexuel-

crime, horror, cruelty and violence, shall be deemed to be obscene. R.S., c. C-34, s. 159.

Warrant of seizure

164. (1) A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is obscene or a crime comic shall issue a warrant under his hand authorizing seizure of the copies.

Summons to occupier

(2) Within seven days of the issue of a warrant under subsection (1), the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

Owner and author may appear

(3) The owner and the author of the matter seized under subsection (1), and alleged to be obscene or a crime comic, may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the matter.

Order of forfeiture

(4) If the court is satisfied that the publication referred to in subsection (1) is obscene or a crime comic, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

Disposal of matter

(5) If the court is not satisfied that the publication referred to in subsection (1) is obscene or a crime comic, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

Appeal

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

(*a*) on any ground of appeal that involves a question of law alone,

(*b*) on any ground of appeal that involves a question of fact alone, or

(*c*) on any ground of appeal that involves a question of mixed law and fact,

as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XXI and sections 673 to 696 apply

les et de l'un ou plusieurs des sujets suivants, savoir : le crime, l'horreur, la cruauté et la violence. S.R., ch. C-34, art. 159.

Mandat de saisie

164. (1) Un juge convaincu, par une dénonciation sous serment, qu'il existe des motifs raisonnables de croire qu'une publication dont des exemplaires sont tenus, aux fins de vente ou distribution, dans un local du ressort du tribunal, est obscène ou est une histoire illustrée de crime, doit émettre, sous son seing, un mandat autorisant la saisie des exemplaires.

Sommation à l'occupant

(2) Dans un délai de sept jours après l'émission du mandat, le juge doit lancer une sommation contre l'occupant du local, astreignant cet occupant à comparaître devant le tribunal et à présenter les raisons pour lesquelles la matière saisie ne devrait pas être confisquée au profit de Sa Majesté.

Le propriétaire et l'auteur peuvent comparaître

(3) Le propriétaire ainsi que l'auteur de la matière saisie et qu'on prétend être obscène ou une histoire illustrée de crime peuvent comparaître et être représentés dans les procédures pour s'opposer à l'établissement d'une ordonnance portant confiscation de cette matière.

Ordonnance de confiscation

(4) Si le tribunal est convaincu que la matière est obscène ou une histoire illustrée de crime, il doit rendre une ordonnance la déclarant confisquée au profit de Sa Majesté du chef de la province où les procédures ont lieu, pour qu'il en soit disposé conformément aux instructions du procureur général.

Sort de la matière

(5) Si le tribunal n'est pas convaincu que la publication est obscène ou une histoire illustrée de crime, il doit ordonner que la matière soit remise à la personne entre les mains de qui elle a été saisie, dès l'expiration du délai imparti pour un appel final.

Appel

(6) Il peut être interjeté appel d'une ordonnance rendue selon les paragraphes (4) ou (5) par toute personne qui a comparu dans les procédures :

a) pour tout motif d'appel comportant une question de droit seulement;

b) pour tout motif d'appel comportant une question de fait seulement;

c) pour tout motif d'appel comportant une question de droit et de fait,

comme s'il s'agissait d'un appel contre une déclaration de culpabilité ou contre un jugement ou verdict d'acquittement, selon le cas, with such modifications as the circumstances require.

Consent

(7) Where an order has been made under this section by a judge in a province with respect to one or more copies of a publication, no proceedings shall be instituted or continued in that province under section 163 with respect to those or other copies of the same publication without the consent of the Attorney General.

Definitions

(8) In this section,

"court" *«tribunal»*

"court" means

(*a*) in the Province of Quebec, the provincial court, the court of the sessions of the peace, the municipal court of Montreal and the municipal court of Quebec,

(*b*) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(*c*) in the Province of Prince Edward Island, the Supreme Court, or

(*d*) in any other province, a county or district court;

"crime comic" *«histoire...»*

"crime comic" has the same meaning as in section 163;

"judge" *«juge»*

"judge" means a judge of a court. R.S., c. C-34, s. 160; 1974-75-76, c. 48, s. 25; 1978-79, c. 11, s. 10; 1984, c. 41, s. 2.

Tied sale

165. Every one commits an offence who refuses to sell or supply to any other person copies of any publication for the reason only that the other person refuses to purchase or acquire from him copies of any other publication that the other person is apprehensive may be obscene or a crime comic. R.S., c. C-34, s. 161.

Restriction on publication of reports of judicial proceedings

166. (1) A proprietor, an editor, a master printer or a publisher commits an offence who prints or publishes

(*a*) in relation to any judicial proceedings, any indecent matter or indecent medical, surgical or physiological details, being matter or details that, if published, are calculated to injure public morals;

sur une question de droit seulement en vertu de la partie XXI, et les articles 673 à 696 s'appliquent, compte tenu des adaptations de circonstance.

Consentement

(7) Lorsqu'un juge a rendu une ordonnance, en vertu du présent article, dans une province relativement à un ou plusieurs exemplaires d'une publication, aucune poursuite ne peut être intentée ni continuée dans cette province aux termes de l'article 163, en ce qui concerne ces exemplaires ou autres exemplaires de la même publication, sans le consentement du procureur général.

Définitions

(8) Les définitions qui suivent s'appliquent au présent article.

«tribunal» *"court"*

«tribunal»

a) Dans la province de Québec, la cour provinciale, la cour des sessions de la paix, la cour municipale de Montréal et la cour municipale de Québec;

b) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, la Cour du Banc de la Reine;

c) dans la province de l'Île-du-Prince-Édouard, la Cour suprême;

d) dans les autres provinces, une cour de comté ou de district.

«histoire illustrée de crime» *"crime..."*

«histoire illustrée de crime» A le sens que lui donne l'article 163.

«juge» *"judge"*

«juge» Juge d'un tribunal. S.R., ch. C-34, art. 160; 1974-75-76, ch. 48, art. 25; 1978-79, ch. 11, art. 10; 1984, ch. 41, art. 2.

Vente spéciale conditionnée

165. Commet une infraction quiconque refuse de vendre ou fournir à toute autre personne des exemplaires d'une publication, pour la seule raison que cette personne refuse d'acheter ou d'acquérir de lui des exemplaires d'une autre publication qu'elle peut, dans son appréhension, considérer comme obscène ou comme histoire illustrée de crime. S.R., ch. C-34, art. 161.

Restriction à la publication des comptes rendus de procédures judiciaires

166. (1) Commet une infraction un propriétaire, rédacteur, maître imprimeur ou éditeur qui imprime ou publie :

a) relativement à une procédure judiciaire, toute matière indécente ou tout détail médical, chirurgical ou physiologique indécent, lesquels, étant publiés, sont de nature à offenser la morale publique;

Memorandum D9-1-1, Ottawa, June 12, 1991

Revenue Canada Customs and Excise
Revenu Canada Douanes et Accise

MEMORANDUM D9-1-1

Ottawa, June 12, 1991

SUBJECT

INTERPRETATIVE POLICY AND PROCEDURES FOR THE ADMINISTRATION OF TARIFF CODE 9956

This Memorandum outlines and explains the interpretation of tariff code 9956 of Schedule VII to the *Customs Tariff* and provides procedures to be followed in this regard.

Legislation

Tariff code 9956 reads:

> "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that
>
> *(a)* are deemed to be obscene under subsection 163(8) of the *Criminal Code*;
>
> *(b)* constitute hate propaganda within the meaning of subsection 320(8) of the *Criminal Code*;
>
> *(c)* are of a treasonable character within the meaning of section 46 of the *Criminal Code*; or
>
> *(d)* are of a seditious character within the meaning of sections 59 and 60 of the *Criminal Code*."

Ottawa, le 12 juin 1991

OBJET

POLITIQUE D'INTERPRÉTATION ET PROCÉDURE CONCERNANT L'APPLICATION DU CODE TARIFAIRE 9956

Le présent mémorandum énonce et explique l'interprétation du code tarifaire 9956 de l'annexe VII au *Tarif des douanes* ainsi que la procédure à suivre à cet égard.

Législation

Le libellé du code tarifaire 9956 se lit comme suit :

> «Livres, imprimés, dessins, peintures, gravures, photographies ou reproductions de tout genre qui :
>
> *a)* sont réputés obscènes au sens du paragraphe 163(8) du *Code criminel*;
>
> *b)* constituent de la propagande haineuse au sens du paragraphe 320(8) du *Code criminel*;
>
> *c)* sont de nature à fomenter la trahison au sens de l'article 46 du *Code criminel*;
>
> *d)* sont de nature à fomenter la sédition au sens des articles 59 et 60 du *Code criminel*.»

GUIDELINES AND GENERAL INFORMATION

1. This tariff code covers books, printed paper, drawings, intings, prints, photographs, movie film, phonograph records, deotapes, audiotapes and representations of any kind.

Goods which are of a treasonable character are, for example, goods which advocate the use of force or violence to overthrow the Government of Canada or a province or, which communicate or make ailable, without lawful authority, to an agent of a state other than nada, military or scientific information that may be used by that state for a purpose prejudicial to the safety or defence of Canada.

LIGNES DIRECTRICES ET RENSEIGNEMENTS GÉNÉRAUX

1. Ce code tarifaire englobe les livres, les imprimés, les gravures, les photographies, les films, les disques pour phonographe, les vidéocassettes, les bandes d'enregistrement sonore et les reproductions de tout genre.

2. Les marchandises qui sont de nature à fomenter la trahison sont, par exemple, les marchandises qui préconisent le recours à la force ou à la violence en vue de renverser le gouvernement du Canada ou d'une province, ou qui communiquent à un agent d'un État autre que le Canada, ou met à la disposition d'un tel agent, sans autorisation légitime, des renseignements d'ordre militaire ou scientifique lesquels peuvent servir à des fins préjudiciables à la sécurité ou à la défense du Canada.

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3. Goods which are of a seditious character are, for example, goods which advocate the use, without the authority of law, of force as a means of accomplishing governmental change within Canada.

4. Goods which constitute hate propaganda under the *Criminal Code* are those which advocate or promote genocide or promote hatred against an identifiable group distinguished by colour, race, religion or ethnic origin. In particular, the following goods should be prohibited as hate propaganda:

(a) goods that advocate or promote the destruction, in whole or in part, of any identifiable group by advocating or promoting:

(1) killing members of the group, or

(2) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

5. Goods which are deemed to be obscene under the *Criminal Code* are those of, a dominant characteristic of which, is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence.

6. The following goods, in so far as they are deemed to be obscene or hate propaganda within the meanings of the terms as set forth above, are to be classified under tariff code 9956 and their importation into Canada prohibited:

(a) goods which depict or describe sexual acts that appear to degrade or dehumanize any of the participants, including:

(1) depictions or descriptions of sex with violence, submission, coercion, ridicule, degradation, exploitation or humiliation of any human being, whether sexually explicit or not, and which appear to condone or otherwise endorse such behaviour for the purposes of sexual stimulation or pleasure;

(2) depictions or descriptions of sexual assault (previously, rape). Any goods that depict or describe a sexual activity between male/female, male/male or female/female which appears to be without his/her consent and which appears to be achieved chiefly by force or deception;

3. Les marchandises qui sont de nature à fomenter la sédition sont, par exemple, les marchandises qui préconisent l'usage, sans l'autorité des lois, de la force comme moyen d'opérer un changement de gouvernement au Canada.

4. Les marchandises qui constituent de la propagande haineuse aux fins du *Code criminel* sont celles qui préconisent ou fomentent le génocide ou l'incitation publique à la haine contre un groupe identifiable qui se différencie des autres par la couleur, la race, la religion ou l'origine ethnique. En particulier, les marchandises suivantes doivent être prohibées en tant que propagande haineuse :

a) les marchandises qui préconisent ou fomentent la destruction totale ou partielle d'un groupe identifiable, à savoir :

(1) le fait de tuer des membres du groupe, ou

(2) le fait de soumettre délibérément le groupe à des conditions de vie propres à entraîner sa destruction physique.

5. Les marchandises qui sont réputées obscènes au sens du *Code criminel* sont celles dont la caractéristique dominante est l'exploitation indue des choses sexuelles, ou de choses sexuelles et de l'un ou plusieurs des sujets suivants, à savoir : le crime, l'horreur, la cruauté et la violence.

6. Les marchandises suivantes, dans la mesure où elles sont réputées obscènes ou de la propagande haineuse comme il est indiqué ci-dessus, sont classifiées sous le code tarifaire 9956 et leur importation au Canada doit être interdite :

a) les marchandises représentant ou décrivant des actes sexuels qui semblent dégrader ou déshumaniser n'importe lequel des participants, y compris :

(1) les représentations ou les descriptions du sexe avec violence, soumission, contrainte, ridicule, dégradation, exploitation ou humiliation de tout être humain, que le message soit explicite ou non sur le plan sexuel, lesquelles semblent excuser ou autrement approuver un tel comportement à des fins d'excitation sexuelle ou de plaisir;

(2) les représentations ou les descriptions de l'agression sexuelle (anciennement, viol); toute marchandise représentant ou décrivant une activité sexuelle entre un homme et une femme, un homme et un homme ou une femme et une femme, qui semble se produire sans leur consentement et qui semble surtout exécutée en usant de la force ou de la supercherie;

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anything suggestive about someone who appears under 18 – even if it's clear they're not

(3) depictions or descriptions of bondage, involuntary servitude and the state of human beings subjected to external control, in a sexual context;

(4) depictions or descriptions which appear to be associating sexual pleasure or gratification with pain and suffering, and with the mutilation of or letting of blood from any part of the human body, involving violence, coercion and lack of basic dignity and respect for a human being;

(5) depictions or descriptions of sexual gratification gained through causing physical pain or humiliation, or the getting of sexual pleasure from dominating, mistreating or hurting a human being. This includes depictions and descriptions of physical force which appear to be used so as to injure, damage or destroy; of extreme roughness of action; of unjust or callous use of force or power; of spanking, beating or violent shoving in a sexual context;

(6) depictions or descriptions of mutilation or removal of any part of the human body or of the taking of human life, real or implied, for the purposes of sexual arousal;

(7) depictions or descriptions of menstrual blood, fecal matter, urine or the inducement of feces through enemas as part of sexual arousal; and

(8) depictions or descriptions of anal penetration, including depictions or descriptions involving implements of all kinds;

(b) goods depicting or describing sexual acts involving children or juveniles, and depictions or descriptions of children or juveniles in total or partial undress, alone or in the presence of other persons, and in which the context is even slightly sexually suggestive. Children and juveniles are persons actually or apparently under the age of 18;

(3) les représentations ou les descriptions, dans un contexte sexuel, de l'asservissement, de la servitude involontaire et d'êtres humains soumis à un contrôle extérieur;

(4) les représentations ou les descriptions qui semblent associer un plaisir sexuel ou une satisfaction sexuelle à la douleur ou à la souffrance, et à de la mutilation ou à un écoulement de sang d'une quelconque partie du corps humain, impliquant la violence, la contrainte et le manque de dignité élémentaire et de respect à l'égard d'un être humain;

(5) les représentations ou les descriptions de la satisfaction sexuelle obtenue en causant de la douleur physique ou de l'humiliation, ou l'obtention de plaisir sexuel par la domination, les mauvais traitements ou en blessant un être humain; ceci comprend les représentations et les descriptions de la force physique qui semblent servir à blesser, endommager ou à détruire; de la violence extrême; de l'usage injustifié ou impitoyable de la force ou de la puissance; de fessées, de meurtrissures ou de coups violents administrés dans un contexte sexuel;

(6) les représentations ou les descriptions aux fins d'excitation sexuelle de la mutilation ou de l'ablation d'une quelconque partie du corps humain, ou de la suppression de la vie humaine, réelles ou simulées;

(7) les représentations ou les descriptions du sang menstruel, de matières fécales, de l'urine ou de la provocation de défécation par des lavements comme moyen d'excitation sexuelle; et

(8) les représentations ou les descriptions de la pénétration anale, y compris les représentations ou les descriptions impliquant des instruments de toutes sortes;

b) les marchandises représentant ou décrivant des actes sexuels impliquant des enfants ou des adolescents, et les représentations ou les descriptions d'enfants ou d'adolescents complètement nus ou en partie, seuls ou en présence de d'autres personnes et dans lesquelles le contexte est même légèrement suggestif au point de vue sexuel; les enfants et les adolescents sont des personnes réellement ou apparemment âgées de moins de 18 ans;

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(c) goods depicting or describing sexual acts between members of the same family, other than between husband and wife. This includes depictions or descriptions of any sexual activity among members of a family, whether or not they are genetically related (incest), except a husband and wife, which generally appear to condone or otherwise endorse this behaviour for the purposes of sexual stimulation or pleasure;

(d) goods depicting or describing sexual acts between human beings and animals (bestiality). This includes depictions or descriptions of bestiality, whether there is actual copulation with an animal or the animal is merely present and copulation is implied;

(e) goods depicting or describing sexual acts between live persons and dead persons or dead animals (necrophilia); and

(f) goods with some or all of the following characteristics may be subject to prohibition under tariff code 9956 as hate propaganda:

(1) goods that blame an identifiable group for serious economic or social problems;

(2) goods alleging that an identifiable group is manipulating media, trade and finance, government or world politics to the detriment of society as a whole;

(3) goods alleging that an identifiable group is racially inferior and/or weakens other segments of society to the detriment of society as a whole; and

(4) goods alleging that an identifiable group seriously threatens society as a whole.

7. It should be noted that goods which may constitute hate propaganda, based on the above criteria, should be detained and forwarded to Headquarters for review.

8. It should be emphasized that a book, film, video cassette, etc., is to be assessed in its entirety. It is to be considered as a whole and its overall nature and dominant characteristic must be assessed. A section containing subjects outlined in this Memorandum must be assessed as an integral part of the entire work and in the context of its theme. However, goods which in their essence are made up of many individual elements are not to be treated as a whole and may be prohibited on the basis of any one of their elements which fall within the prohibitory provisions of tariff code 9956. Similarly, a magazine or newspaper is to be considered on a segment-by-segment basis.

c) les marchandises représentant ou décrivant des actes sexuels entre des personnes de la même famille autres que mari et femme; ceci inclut les représentations ou les descriptions de toute activité sexuelle entre les membres d'une famille, qu'ils aient des liens de consanguinité (inceste) ou d'alliance, excepté celles entre un mari et sa femme, lesquelles semblent en général excuser ou autrement approuver un tel comportement à des fins d'excitation sexuelle ou de plaisir;

d) les marchandises représentant ou décrivant des actes sexuels entre des humains et des animaux (bestialité); ceci inclut les représentations ou les descriptions de la bestialité, qu'il s'agisse de copulation avec un animal ou du fait qu'un animal soit simplement présent et que la copulation soit suggérée;

e) les marchandises représentant ou décrivant des actes sexuels entre des personnes vivantes et des personnes mortes ou des animaux morts (nécrophilie); et

f) les marchandises ayant une ou plusieurs des caractéristiques suivantes peuvent faire l'objet d'une prohibition sous le code tarifaire 9956 en tant que propagande haineuse, à savoir :

(1) les marchandises blâmant un groupe identifiable pour des problèmes sérieux d'ordre social ou économique;

(2) les marchandises alléguant qu'un groupe identifiable manipule les médias, le commerce et les finances, le gouvernement ou la politique à l'échelle mondiale au détriment de la société dans l'ensemble;

(3) les marchandises alléguant qu'un groupe identifiable est inférieur en ce qui concerne sa race et (ou) qu'il affaiblit d'autres couches de la société au détriment de la société dans l'ensemble; et

(4) les marchandises alléguant qu'un groupe identifiable menace sérieusement la société dans l'ensemble.

7. Il est à noter que les marchandises susceptibles de constituer de la propagande haineuse, selon les critères susmentionnés, devraient être retenues et acheminées à l'Administration centrale pour examen.

8. Il faut insister sur le fait qu'un livre, un film, une vidéocassette, etc., est évalué(e) dans son intégralité. Ces articles sont considérés comme un tout, et leur nature d'ensemble ainsi que leur caractéristique dominante sont évaluées. Une section contenant des sujets exposés dans ce mémorandum est évaluée en tant que partie intégrante de l'oeuvre entière et dans le contexte de son thème. Toutefois, les marchandises essentiellement composées de plusieurs articles distincts ne sont pas traitées en tant qu'un ensemble et chacun d'eux peut être prohibé si un quelconque de ses éléments est visé par les dispositions du code tarifaire 9956. De façon analogue, un magazine ou un journal est étudié segment par segment.

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9. Goods not classified under tariff code 9956 include the following:

(a) for the purpose of sections 22(3) and 464 of the *Criminal Code*, goods which counsel, procure or incite persons to commit criminal offences are not to be classified under tariff code 9956, unless they are determined to be obscene or constitute hate propaganda or are of a seditious or treasonable character;

(b) goods which are intended primarily to provide advice on how the risk of AIDS or other sexually transmitted infections can be minimized are not to be prohibited, solely by reason of their containing incidental but necessary references to anal penetration;

(c) goods which communicate in a rational and unsensational manner information about a sexual activity that is not unlawful and in which the illustrations are not prurient in nature are not to be prohibited. For example, goods which communicate in such a manner information about anal penetration committed in private between a husband and wife or between two consenting adults will be released;

(d) sex aids and sex toys are not to be deemed obscene and, therefore, are not to be classified under tariff code 9956; goods are not to be prohibited solely on the basis of advertisements which simply promote the sale of various sex toys or sex aids, including implements specified as "anal" or specific products such as "Anal Lube". Further, advertisements which contain only a passing reference to the word "anal" are not considered, of and by themselves, to form a valid basis for the prohibition of a magazine. However, explicit textual descriptions or visual depictions in the advertisements themselves of acts considered obscene will be prohibited;

(e) pictures which merely suggest that anal penetration is being performed are not to be prohibited. Explicit depictions or descriptions of anal penetration are to be prohibited; and

(f) in assessing goods under tariff code 9956, full recognition should be given to freedom of expression. In particular, with respect to goods which may constitute hate propaganda, classification under tariff code 9956 will not be made if there is a possibility that the goods may:

(1) communicate statements that are established to be true;

9. Les marchandises suivantes ne sont pas classifiées sous le code tarifaire 9956 :

a) aux fins des articles 22(3) et 464 du *Code criminel*, les marchandises qui conseillent à une personne de commettre une infraction, l'y amènent ou l'y incitent, ne sont pas classifiées sous le code tarifaire 9956 à moins d'être obscènes, de la propagande haineuse, ou de nature à fomenter la trahison ou la sédition;

b) les marchandises dont le but est essentiellement de fournir des conseils sur la façon de minimiser les risques du SIDA ou de d'autres maladies transmises sexuellement ne sont pas interdites uniquement parce qu'elles font allusion, dans le contexte, à la pénétration anale;

c) les marchandises qui communiquent, d'une façon raisonnable et non sensationnelle, des renseignements concernant un acte sexuel qui n'est pas illégitime et dans lesquelles les images ne sont pas de nature lascive, ne sont pas interdites; par exemple, les marchandises qui communiquent de telle façon des renseignements à propos de la pénétration anale commise dans l'intimité entre un mari et sa femme ou entre deux adultes consentants sont dédouanées;

d) les aides et les jouets sexuels ne sont pas réputés obscènes et, par conséquent, ne sont pas classifiés sous le code tarifaire 9956; l'importation des marchandises n'est pas prohibée uniquement en tenant compte des réclames qu'elles contiennent et qui encouragent la vente de différents jouets ou aides sexuels, comprenant les instruments précisés en tant que «anaux» ou les produits spécifiques tels que le «lubrifiant anal»; de plus, les réclames qui renferment seulement une brève référence au mot «anal» ne sont pas considérées, en soi, comme base suffisante pour la prohibition d'un magazine; toutefois, les descriptions sexuelles explicites ou les représentations visuelles explicites dans les réclames, des actes considérés obscènes, sont prohibées;

e) les images qui simplement suggèrent la pénétration anale ne sont pas prohibées; les représentations explicites ou les descriptions explicites de la pénétration anale sont prohibées; et

f) en évaluant les marchandises sous le code tarifaire 9956, on doit avoir à l'esprit la liberté d'expression. Notamment, en ce qui concerne les marchandises pouvant constituer de la propagande haineuse, une classification sous le code tarifaire 9956 ne doit pas être effectuée s'il y a une possibilité que les marchandises puissent :

(1) communiquer des déclarations qui sont reconnues comme étant vraies;

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(2) predominantly express, in good faith, an opinion upon a religious subject;

(3) be relevant to any subject of public interest, the discussion of which is for the public benefit and, on reasonable grounds, believed to be true; or

(4) be intended, in good faith, to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred towards an identifiable group in Canada.

Advance Reviews

10. For the importer or publisher who encounters difficulties in determining whether or not his goods are in compliance with the above-noted guidelines, the Prohibited Importations Unit in Ottawa reviews advance samples of goods, prior to commercial importation, suspected of falling within the provisions of tariff code 9956 and provides the importer or publisher with an opinion regarding its admissibility into Canada. The Unit also provides advice and guidance for those unfamiliar with Customs' guidelines and practices concerning the administration of this tariff code. These services are designed to encourage and promote voluntary compliance with legislation in this area. Importers or publishers who wish to obtain additional information about these procedures may contact the Manager, Prohibited Importations Unit, Tariff Programs, in Ottawa at (613) 954-7048.

11. For the purposes of the prohibitory provisions of tariff code 9956, goods which are made (manufactured, printed, purchased, etc.) in Canada and exported are considered to constitute an importation on their return to Canada.

12. The decision to detain and classify goods under tariff code 9956 is to be communicated to the prospective importer or owner by means of a Notice of Detention/Determination, form K 27. The prospective importer or owner is also to be advised in writing of his/her statutory right to request a re-determination and to appeal to the courts the tariff classification of the goods under sections 60, 63, 67 and 71 of the *Customs Act*.

13. A request for re-determination or re-appraisal by a Tariff and Values Administrator (TVA) (who is a designated officer) must be made on form B 2 and filed within 90 days of the date of the written notice of classification (Part B of the tariff code 9956 form K 27) to the prospective consignee. If the prospective consignee is not satisfied with the TVA's decision, he/she may request a further re-determination or re-appraisal by the Deputy Minister of National Revenue, Customs and Excise, by filing a second form B 2 within

(2) exprimer d'une manière prédominante, de bonne foi, une opinion religieuse;

(3) se rapporter à une question d'intérêt public dont le débat se fait au profit du public et, en se fondant sur des motifs raisonnables, est crue comme étant vraie; ou

(4) vouloir, de bonne foi, attirer l'attention afin qu'il y soit remédié, sur des questions provoquant ou de nature à provoquer des sentiments de haine contre un groupe identifiable au Canada.

Examens anticipés

10. Pour l'importateur ou l'éditeur qui ne peut déterminer si ses marchandises sont en accord avec les présentes lignes directrices, l'Unité des importations prohibées à Ottawa examine, préalablement à l'importation commerciale, des échantillons anticipés des marchandises à être importées et susceptibles d'être visées par le code tarifaire 9956, et fournit à l'importateur ou à l'éditeur une opinion concernant l'admissibilité de ses marchandises au Canada. Également, l'unité fournit à titre d'indication des avis et des conseils à ceux qui sont peu familiers avec les lignes directrices et la pratique des Douanes concernant l'application du code tarifaire 9956. Ces services sont conçus pour encourager et promouvoir l'observation volontaire de la législation en ce domaine. Tout autre renseignement concernant cette procédure peut être obtenu par l'importateur ou l'éditeur en communiquant avec le gestionnaire de l'Unité des importations prohibées, Programmes tarifaires, à Ottawa au (613) 954-7048.

11. Aux fins du code tarifaire 9956, les marchandises fabriquées (manufacturées, imprimées, acquises, etc.) au Canada et exportées sont considérées être une importation lors de leur retour au Canada.

12. La décision de retenir et de classifier les marchandises sous le code tarifaire 9956 est communiquée à l'importateur ou au propriétaire éventuel en émettant un Avis de retenue ou de classement tarifaire, formule K 27. L'importateur ou le propriétaire éventuel est aussi avisé par écrit de son droit de demander, en vertu des articles 60, 63, 67 et 71 de la *Loi sur les douanes*, la révision, le réexamen et d'en appeler à un tribunal du classement tarifaire des marchandises.

13. La demande de révision à un administrateur du tarif et des valeurs (ATV) (qui est un agent désigné) est faite en remplissant la formule B 2 dans les 90 jours suivant l'avis de classement tarifaire (partie B de la formule K 27 visant le code tarifaire 9956) envoyé au consignataire éventuel. Si le consignataire éventuel n'est pas satisfait de la décision de l'ATV, il peut demander un réexamen au sous-ministre du Revenu national, Douanes et Accise, en remplissant une deuxième formule B 2 dans les 90 jours suivant l'avis

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90 days of the date of the TVA's decision. It should be noted that the Minister may, under paragraphs 60(1)(*b*) and 63(1)(*b*), extend the 90 day time period to two years where he deems it advisable. In these instances, the goods would have to be stored in a secure environment for the two year period. Given the nature of the goods and the administrative problems in ensuring their security, only under exceptional circumstances will the importer be given the right to file a request within the two year time period.

14. Requests should be filed at the respective Customs office or regional office where the goods were reported.

15. The decision of the Deputy Minister classifying goods under tariff code 9956 may be appealed to the relevant court pursuant to section 67 (as modified by section 71) of the *Customs Act*.

16. When an importer attempts to import into Canada goods identical to those previously imported and prohibited at the Deputy Minister level, a decision pursuant to subsection 64(*a*) of the *Customs Act* may be rendered, thereby allowing the importer to appeal directly to the court.

17. When importation of goods into Canada is prohibited, the importer is to be asked how they are to be disposed of (either exported or abandoned to the Crown).

18. Abandoned goods are to be handled as follows: a general receipt, form K 21, will be completed; the original copy will be signed and given to the importer, which will include: the name and address of the importer and a statement to the effect that the goods described thereunder are classified under the prohibitory provisions of tariff code 9956 and are herewith abandoned to the Crown.

19. Goods may be exported by means other than through the mails (since mailing obscene matter constitutes an offence), providing this is done under Customs supervision and at the importer's expense.

20. The importer must notify Customs of arrangements for export of goods. If exportation is:

(*a*) to be handled personally, the importer must present form E 15 completed in accordance with Memorandum D6-2-3, Identification of Goods Exported or Destroyed, Form E 15, and be escorted by Customs to the airline baggage check-in or departure area, or

de la décision prise par l'ATV. Il est à noter qu'en vertu des alinéas 60(1)*b*) et 63(1)*b*) le Ministre peut, s'il l'estime souhaitable, proroger le délai de 90 jours à deux ans. Dans ces cas, les marchandises devraient être entreposées dans un endroit sûr, pour une période de deux ans. Vu la nature des marchandises et les problèmes d'ordre administratif en assurant leur sûreté, l'importateur se verra accorder le droit de déposer une demande de révision ou de réexamen à l'intérieur du délai de deux ans seulement dans des situations exceptionnelles.

14. La demande est déposée au bureau de douane où les marchandises ont été rapportées ou au bureau de douane régional.

15. La décision du Sous-ministre concernant le classement tarifaire des marchandises sous le code tarifaire 9956 peut faire l'objet d'un appel à la cour appropriée, en vertu de l'article 67 (tel qu'il est modifié par l'article 71) de la *Loi sur les douanes*.

16. Lorsqu'un importateur tente d'importer au Canada des marchandises identiques à celles qui ont déjà été importées et prohibées au niveau du Sous-ministre, une décision en vertu du paragraphe 64*a*) de la *Loi sur les douanes* peut être rendue, pour permettre à l'importateur d'en appeler directement à la cour.

17. Lorsque l'importation au Canada des marchandises est prohibée, on demande à l'importateur la manière de disposition (exportation ou abandon à la Couronne).

18. Les marchandises abandonnées sont traitées comme suit : un reçu général est rempli sur la formule K 21; l'original, signé et remis à l'importateur, renferme le nom et l'adresse de l'importateur, et une déclaration suivant laquelle les marchandises décrites en-dessous sont classifiées sous les dispositions prohibitives du code tarifaire 9956 et sont abandonnées à la Couronne.

19. Les marchandises peuvent être exportées aux frais de l'exportateur, autrement que par la poste (puisque la mise à la poste de choses obscènes constitue une infraction), et sous la surveillance douanière.

20. L'importateur avise les Douanes des dispositions prises pour l'exportation des marchandises. Si l'exportation :

a) est faite par l'importateur lui-même, il présente la formule E 15 remplie conformément au mémorandum D6-2-3, Identification des marchandises exportées ou détruites, formule E 15, et il est escorté par les Douanes jusqu'au service d'enregistrement des bagages de la ligne aérienne ou jusqu'à la zone de départ, ou

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(b) by commercial conveyance (i.e., a Canada Customs bonded carrier), the exporting carrier must physically retrieve the goods and present completed form E 15 and the manifest or waybill.

21. Should the importer fail to effect release, or fail to abandon or to export his/her goods within the prescribed period, the goods are to be deemed to be unclaimed and are to be handled in accordance with Memorandum D4-1-6, Disposal of Abandoned and Forfeited Goods.

22. Further particulars may be obtained by contacting the Manager of Tariff Programs and Appraisal at any regional Customs office.

(b) est assurée par un transporteur commercial (c'est-à-dire un transporteur cautionné de Douanes Canada), celui-ci récupère les marchandises et soumet la formule E 15 dûment remplie ainsi que le manifeste en douane ou la feuille de route.

21. Si l'importateur néglige d'obtenir le dédouanement des marchandises ou s'il néglige d'abandonner ou d'exporter les marchandises dans la période réglementée, les marchandises sont réputées non réclamées et sont traitées conformément au mémorandum D4-1-6, Disposition des marchandises abandonnées et confisquées.

22. Tout autre renseignement peut être obtenu en communiquant avec le gestionnaire des Programmes tarifaires et de l'appréciation à un bureau de douane régional.

REFERENCES

ISSUING OFFICE –

Tariff Programs

LEGISLATIVE REFERENCES –

Customs Tariff, section 114 and Schedule VII, tariff code 9956
Customs Act, sections 60, 63, 64*(a)*, 67 and 71
Criminal Code, sections 22(3), 46, 59, 60, 163(8) 320(8) and 464

HEADQUARTERS FILE –

4545-1

SUPERSEDED MEMORANDA "D"–

D9-1-1, January 1, 1988

OTHER REFERENCES –

D4-1-6, D6-2-3

SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE IN BOTH OFFICIAL LANGUAGES.

THIS MEMORANDUM IS ISSUED UNDER THE AUTHORITY OF THE DEPUTY MINISTER OF NATIONAL REVENUE, CUSTOMS AND EXCISE.

RÉFÉRENCES

BUREAU DE DIFFUSION –

Programmes tarifaires

RÉFÉRENCES LÉGALES –

Tarif des douanes, article 114 et annexe VII, code tarifaire 9956
Loi sur les douanes, articles 60, 63, 64*a)*, 67 et 71
Code criminel, articles 22(3), 46, 59, 60, 163(8), 320(8) et 464

DOSSIER DE L'ADMINISTRATION CENTRALE –

4545-1

CECI ANNULE LES MÉMORANDUMS «D» –

D9-1-1, 1 janvier 1988

AUTRES RÉFÉRENCES –

D4-1-6, D6-2-3

LES SERVICES FOURNIS PAR LE MINISTÈRE SONT DISPONIBLES DANS LES DEUX LANGUES OFFICIELLES.

CE MÉMORANDUM A L'APPROBATION DU SOUS-MINISTRE DU REVENU NATIONAL, DOUANES ET ACCISE.

a request for a re-determination or further re-determination of the origin of goods.
1988, c. 65, s. 70.

Determination of tariff classification and appraisal of value for duty

58. (1) An officer may determine the tariff classification and appraise the value for duty of imported goods at any time before or within thirty days after they are accounted for under subsection 32(1), (3) or (5).

Effect of determination or appraisal

(2) Where a determination or appraisal is made under subsection (1) in respect of goods, the person who accounts for the goods shall, in accordance with the determination or appraisal,

(*a*) pay any amount owing as duties in respect of the goods or, where a request is made under section 60, give security satisfactory to the Minister in respect of the amount owing; or

(*b*) be given a refund of any amount paid in excess of the duties owing in respect of the goods.

Payment of amounts owing or refunds

(3) Any amount owing under subsection (2) in respect of goods, other than an amount in respect of which security is given, or any refund payable under that subsection is payable within ninety days after the time the determination or appraisal is made, whether or not a request is made under section 60.

Amount owing

(4) For the purposes of paragraph (2)(*a*), the amount owing as duties in respect of goods under subsection (2) does not include any amount owing in respect thereof pursuant to section 32 or 33.

Deemed determination and appraisal

(5) Where an officer does not make a determination or an appraisal under subsection (1) in respect of goods, a determination of the tariff classification and an appraisal of the value for duty of the goods shall, for the purposes of sections 60, 61 and 63, be deemed to have been made thirty days after the time the goods were accounted for under subsection 32(1), (3) or (5) in accordance with any representations made at that time in respect of the tariff classification or value for duty by the person accounting for the goods.

Review

(6) A determination of tariff classification or an appraisal of value for duty is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the

Délai d'intervention de l'agent

58. (1) L'agent peut intervenir, soit avant, soit dans les trente jours suivant leur déclaration en détail faite conformément au paragraphe 32(1), (3) ou (5), pour effectuer le classement tarifaire et apprécier la valeur en douane des marchandises importées.

Effet du classement ou de l'appréciation

(2) L'auteur de la déclaration en détail visée au paragraphe (1) doit, selon le résultat du classement ou de l'appréciation :

a) soit verser tout montant de droits dû sur les marchandises ou, sur demande présentée en vertu de l'article 60, donner la garantie, que le ministre estime indiquée, du versement du montant dû;

b) soit recevoir le remboursement de tout excédent de droits versé sur les marchandises.

Paiement des montants

(3) Les montants dus en application du paragraphe (2) sur des marchandises, à l'exception de ceux pour lesquels une garantie a été donnée, ou les montants à rembourser en application de ce paragraphe sont payables dans un délai de quatre-vingt-dix jours à compter du classement ou de l'appréciation, même si une demande a été présentée en vertu de l'article 60.

Montant dû

(4) Pour l'application de l'alinéa (2)*a*), le montant de droits dû sur des marchandises en application du paragraphe (2) ne comprend pas un montant dû sur celles-ci en application des articles 32 ou 33.

Défaut d'intervention de l'agent

(5) À défaut de l'intervention de l'agent prévue par le paragraphe (1), le classement tarifaire et l'appréciation de la valeur en douane sont considérés, pour l'application des articles 60, 61 et 63, comme ayant été faits trente jours après la date de la déclaration en détail, faite conformément au paragraphe 32(1), (3) ou (5), selon les énonciations que celle-ci comporte à cet égard.

Révision ou réexamen

(6) Le classement tarifaire ou l'appréciation de la valeur en douane ne sont susceptibles de révision ou réexamen, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre

extent and in the manner provided by sections 60 to 65.

Re-determination and Re-appraisal by Designated Officer

Designated officer

59. Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section (in sections 60 and 61 referred to as a "designated officer") may make re-determinations of tariff classifications or re-appraisals of value for duty under sections 60 and 61.

Request for re-determination or re-appraisal

60. (1) The importer or any person who is liable to pay duties owing on imported goods may, after any duties thereon have been paid or security satisfactory to the Minister has been given in respect of the duties owing,

(*a*) within ninety days, or

(*b*) where the Minister deems it advisable, within two years

after the time the determination or appraisal was made in respect of the goods under section 58, request a re-determination of the tariff classification or a re-appraisal of the value for duty.

Idem

(2) A request under this section shall be made to a designated officer in the prescribed manner and in the prescribed form containing the prescribed information.

Decision

(3) On receipt of a request under this section, a designated officer shall, with all due dispatch, re-determine the tariff classification or re-appraise the value for duty, as the case may be, and give notice of his decision to the person who made the request.

Re-determination or re-appraisal without request

61. A designated officer may, after imported goods have been released,

(*a*) within ninety days,

(*b*) where it was not possible for an officer to make a determination or an appraisal under subsection 58(1) because of insufficient information, within two years,

(*c*) where, on the basis of an audit or examination under section 42, the designated officer deems it advisable, within two years, or

(*d*) where the Minister deems it advisable, within two years

after the time a determination or an appraisal was made in respect of the goods under section 58, re-determine the tariff classification or re-

forme d'intervention que dans la mesure et selon les modalités prévues aux articles 60 à 65.

Révision par l'agent désigné

Attribution des fonctions de révision

59. La révision du classement tarifaire et de l'appréciation de la valeur en douane est confiée à un agent chargé, ou à un agent appartenant à une catégorie d'agents chargée, par le ministre de l'application du présent article, dit agent désigné aux articles 60 et 61.

Demande de révision

60. (1) L'importateur ou toute personne redevable de droits dus sur des marchandises importées peut, après le paiement de droits sur celles-ci ou après avoir donné la garantie, que le ministre estime indiquée, du versement des droits :

a) soit dans les quatre-vingt-dix jours suivant la date du classement tarifaire ou de l'appréciation de la valeur en douane prévus à l'article 58, en demander la révision;

b) soit, si le ministre l'estime souhaitable, dans les deux ans suivant cette date, demander pareille révision.

Idem

(2) La demande prévue au présent article est à présenter à l'agent désigné, selon les modalités réglementaires ainsi qu'en la forme et avec les renseignements déterminés par le ministre.

Décision

(3) Sur réception de la demande prévue au présent article, l'agent désigné procède dans les meilleurs délais à la révision et donne avis de sa décision au demandeur.

Révision d'office

61. L'agent désigné peut, dans les délais — suivant la date du classement ou de l'appréciation prévus à l'article 58 — indiqués ci-après, procéder à la révision du classement tarifaire ou de l'appréciation de la valeur en douane de marchandises importées qui ont été dédouanées :

a) quatre-vingt-dix jours;

b) deux ans, lorsqu'un agent n'a pas été en mesure, faute de renseignements suffisants, de procéder au classement ou à l'appréciation prévus au paragraphe 58(1);

c) deux ans, lorsqu'il l'estime souhaitable d'après les résultats de la vérification ou de l'examen visés à l'article 42;

appraise the value for duty of the goods and, where he makes such a re-determination or re-appraisal he shall forthwith give notice of his decision to the person who accounted for the goods under subsection 32(1), (3) or (5).

Effect of re-determination or re-appraisal

62. (1) Where a re-determination or re-appraisal is made under section 60 or 61 in respect of goods, the person who was given notice of the decision thereunder shall, in accordance with the decision,

(*a*) pay any additional amount owing as duties in respect of the goods or, where a request is made under section 63, give security satisfactory to the Minister in respect of the additional amount owing; or

(*b*) be given a refund of any amount paid in excess of the duties owing in respect of the goods.

When amounts owing or refunds payable

(2) Any amount owing under subsection (1) in respect of goods, other than an amount in respect of which security is given, or any refund payable under that subsection is payable within ninety days after the time the person referred to in that subsection is given notice of the decision, whether or not a request is made under section 63.

Review

(3) A re-determination or a re-appraisal under section 60 or 61 is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 63 or 64.

Re-determination and Re-appraisal by Deputy Minister

Request for further re-determination or re-appraisal

63. (1) Any person may,

(*a*) within ninety days after the time he was given notice of a decision under section 60 or 61, or

(*b*) where the Minister deems it advisable, within two years after the time a determination or appraisal was made under section 58,

request a further re-determination of the tariff classification or a further re-appraisal of the value for duty re-determined or re-appraised under section 60 or 61.

Idem

(2) A request under this section shall be made to the Deputy Minister in the prescribed

d) deux ans, lorsque le ministre l'estime souhaitable.

Le cas échéant, il donne avis sans délai de sa décision à la personne qui les a déclarées en détail en application du paragraphe 32(1), (3) ou (5).

Effet de la révision

62. (1) Dans les cas de révision prévus à l'article 60 ou 61, le destinataire de l'avis de décision doit, selon les termes de celle-ci :

a) soit verser tout complément de droits dû sur des marchandises ou, sur demande présentée en vertu de l'article 63, donner la garantie, que le ministre estime indiquée, du versement du complément de droits;

b) soit recevoir le remboursement de tout excédent de droits versé sur les marchandises.

Paiement des montants

(2) Les montants dus en application du paragraphe (1) sur des marchandises, à l'exception de ceux pour lesquels une garantie a été donnée ou les montants à rembourser en application de ce paragraphe sont payables dans un délai de quatre-vingt-dix jours à compter de la date de l'avis de décision, même si une demande a été présentée en vertu de l'article 63.

Recours ultérieur

(3) Le nouveau classement ou la nouvelle appréciation résultant de la révision prévue à l'article 60 ou 61 n'est susceptible de réexamen, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues à l'article 63 ou 64.

Réexamen par le sous-ministre

Demande de réexamen

63. (1) Toute personne peut demander le réexamen de la révision :

a) dans les quatre-vingt-dix jours suivant l'avis de la décision prise en vertu de l'article 60 ou 61;

b) si le ministre l'estime souhaitable, dans les deux ans suivant le classement ou l'appréciation prévus à l'article 58.

Idem

(2) La demande prévue au présent article est à présenter au sous-ministre, selon les modalités

manner and in the prescribed form containing the prescribed information.

Decision

(3) On receipt of a request under this section, the Deputy Minister shall, with all due dispatch, re-determine the tariff classification or re-appraise the value for duty, as the case may be, and give notice of his decision to the person who made the request.

Re-determination or re-appraisal by Deputy Minister

64. The Deputy Minister may re-determine the tariff classification or re-appraise the value for duty of imported goods

(*a*) within two years after the time a determination or an appraisal was made under section 58, where the Minister deems it advisable,

(*b*) at any time after a re-determination or re-appraisal was made under subsection 63(3), but before an appeal under section 67 is heard, on the recommendation of the Attorney General for Canada, where the re-determination or re-appraisal would reduce duties payable on the goods,

(*c*) at any time, where the person who accounted for the goods under subsection 32(1), (3) or (5) has failed to comply with any of the provisions of this Act or the regulations or has committed an offence under this Act in respect of the goods,

(*d*) at any time, where the re-determination or re-appraisal would give effect to a decision of the Canadian International Trade Tribunal, the Federal Court or the Supreme Court of Canada made in respect of the goods, and

(*e*) at any time, where the re-determination or re-appraisal would give effect in respect of the goods, in this paragraph referred to as the "subsequent goods", to a decision of the Canadian International Trade Tribunal, the Federal Court or the Supreme Court of Canada, or of the Deputy Minister under paragraph (*b*), made in respect of

(i) other like goods of the same importer or owner imported on or prior to the date of importation of the subsequent goods, where the decision relates to the tariff classification of those other goods, or

(ii) other goods of the same importer or owner imported on or prior to the date of importation of the subsequent goods, where the decision relates to the manner of

réglementaires ainsi qu'en la forme et avec les renseignements déterminés par le ministre.

Décision

(3) Sur réception de la demande prévue au présent article, le sous-ministre procède dans les meilleurs délais au réexamen et donne avis de sa décision au demandeur.

Réexamen par le sous-ministre

64. Le sous-ministre peut procéder au réexamen du classement tarifaire ou de l'appréciation de la valeur en douane des marchandises importées :

a) dans les deux ans suivant le classement ou l'appréciation prévus à l'article 58, si le ministre l'estime souhaitable;

b) à tout moment après le réexamen visé au paragraphe 63(3), mais avant l'audition de l'appel prévu à l'article 67, sur recommandation du procureur général du Canada, dans les cas où le réexamen réduirait les droits exigibles sur les marchandises;

c) à tout moment, si la personne qui a déclaré en détail les marchandises en cause, en application du paragraphe 32(1), (3) ou (5), ne s'est pas conformée à la présente loi ou à ses règlements, ou a enfreint les dispositions de cette loi applicables aux marchandises;

d) à tout moment, au cas où le nouveau classement ou la nouvelle appréciation résultant du réexamen donnerait effet à une décision du Tribunal canadien du commerce extérieur, de la Cour fédérale ou de la Cour suprême du Canada rendue au sujet des marchandises;

e) à tout moment, au cas où le nouveau classement ou la nouvelle appréciation résultant du réexamen donnerait effet, pour ce qui est des marchandises en cause, à une décision du Tribunal canadien du commerce extérieur, de la Cour fédérale ou de la Cour suprême du Canada, ou du sous-ministre en application de l'alinéa *b*), rendue au sujet :

(i) soit d'autres marchandises pareilles du même importateur ou propriétaire importées au plus tard à la même date que les marchandises en cause, si la décision porte sur le classement tarifaire des premières,

(ii) soit d'autres marchandises du même importateur ou propriétaire importées au plus tard à la même date que les marchandises en cause, si la décision porte sur le determining the value for duty of those other goods,

and, where the Deputy Minister makes a re-determination or re-appraisal under this section, he shall forthwith give notice of his decision to the person who accounted for the goods under subsection 32(1), (3) or (5).

R.S., 1985, c. 1 (2nd Supp.), s. 64, c. 47 (4th Supp.), s. 52.

Effect of re-determination or re-appraisal by Deputy Minister

65. (1) Where a re-determination or re-appraisal is made under section 63 or 64 in respect of goods, the person who is given notice of the decision thereunder shall, in accordance with the decision,

(*a*) pay any additional amount owing as duties in respect of the goods or, where an appeal is taken under section 67, give security satisfactory to the Minister in respect of the additional amount owing; or

(*b*) be given a refund of any amount paid in excess of the duties owing in respect of the goods.

When amounts owing or refunds payable

(2) Any amount owing under subsection (1) in respect of goods, other than an amount in respect of which security is given, or any refund payable under that subsection is payable within ninety days after the time the person is given notice of the decision, whether or not an appeal is taken under section 67.

Review

(3) A re-determination or a re-appraisal under section 63 or 64 is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 67.

Interest on amounts owing

66. (1) Subject to subsection (2), any person who fails to pay any amount owing under paragraph 58(2)(*a*), 62(1)(*a*) or 65(1)(*a*) within the time set out in subsection 58(3), 62(2) or 65(2), respectively, shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month, after the expiration of the time set out in subsection 58(3), 62(2) or 65(2), as the case may be, during which any amount remains outstanding, calculated on the amount outstanding.

Interest where security given

(2) Any person who gives security under paragraph 58(2)(*a*), 62(1)(*a*) or 65(1)(*a*) in respect of an amount that is subsequently found

mode de détermination de la valeur en douane des premières.

Le cas échéant, il donne avis sans délai de sa décision à la personne qui a déclaré en détail les marchandises en cause en application du paragraphe 32(1), (3) ou (5).

L.R. (1985), ch. 1 (2ᵉ suppl.), art. 64, ch. 47 (4ᵉ suppl.), art. 52.

Effet du réexamen

65. (1) Le destinataire de l'avis prévu à l'article 63 ou 64 doit, selon les termes de la décision :

a) soit verser tout complément de droits dû sur les marchandises ou, si appel a été interjeté en vertu de l'article 67, donner la garantie, que le ministre estime indiquée, du versement du complément de droits;

b) soit recevoir le remboursement de tout excédent de droits versé sur les marchandises.

Paiement des montants

(2) Les montants dus en application du paragraphe (1) sur des marchandises, à l'exception de ceux pour lesquels une garantie a été donnée, ou les montants à rembourser en application de ce paragraphe sont payables dans un délai de quatre-vingt-dix jours à compter de l'avis, même si appel a été interjeté en vertu de l'article 67.

Recours judiciaire

(3) Le nouveau classement ou la nouvelle appréciation résultant du réexamen visé à l'article 63 ou 64 n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues à l'article 67.

Intérêts sur arriérés

66. (1) Sous réserve du paragraphe (2), quiconque omet d'effectuer les versements prévus aux alinéas 58(2)*a*), 62(1)*a*) ou 65(1)*a*) dans les délais prévus respectivement aux paragraphes 58(3), 62(2) ou 65(2) verse, en plus des montants dus, des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur les arriérés par mois ou fraction de mois s'écoulant entre la fin de ces délais et le règlement des arriérés.

Intérêts sur arriérés : garantie

(2) Quiconque donne une garantie en application des alinéas 58(2)*a*), 62(1)*a*) ou 65(1)*a*) pour des montants qui deviennent dus par la

to be owing as duties under this Act shall, unless a review or appeal is pending on the matter, pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month after the expiration of the time set out in subsection 58(3), 62(2) or 65(2), as the case may be, during which the amount remains outstanding, calculated on the amount outstanding.

Interest on refunds

(3) Any person who is given a refund under paragraph 58(2)(*b*), 62(1)(*b*) or 65(1)(*b*) of an amount paid shall be given, in addition to the refund, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the amount was paid and the time the refund is given, calculated on the amount of the refund.

Amounts under ten dollars

(4) Where interest owing under this section is less than ten dollars, no interest shall be paid.

Appeals and References

Appeal to the Canadian International Trade Tribunal

67. (1) A person who deems himself aggrieved by a decision of the Deputy Minister made pursuant to section 63 or 64 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

Publication of notice of appeal

(2) Before making a decision under this section, the Canadian International Trade Tribunal shall provide for a hearing and shall publish a notice thereof in the *Canada Gazette* at least twenty-one days prior to the day of the hearing, and any person who, on or before the day of the hearing, enters an appearance with the Secretary of the Canadian International Trade Tribunal may be heard on the appeal.

Judicial review

(3) On an appeal under subsection (1), the Canadian International Trade Tribunal may make such order, finding or declaration as the nature of the matter may require, and an order, finding or declaration made under this section is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt

suite à titre de droits prévus par la présente loi verse, en plus des montants dus, des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur les arriérés par mois ou fraction de mois s'écoulant entre la fin des délais prévus aux paragraphes 58(3), 62(2) ou 65(2) et le règlement des arriérés.

Intérêts sur remboursements

(3) Quiconque reçoit le remboursement d'excédents de droits prévu aux alinéas 58(2)*b*), 62(1)*b*) ou 65(1)*b*) reçoit, en plus du remboursement, des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur les excédents par mois ou fraction de mois s'écoulant entre le versement des excédents de droits et leur remboursement.

Minimum

(4) Il n'est tenu aucun compte des intérêts dus en application du présent article dont le montant est inférieur à dix dollars.

Appels et recours

Appel devant le Tribunal canadien du commerce extérieur

67. (1) Toute personne qui s'estime lésée par une décision du sous-ministre rendue conformément à l'article 63 ou 64 peut en interjeter appel devant le Tribunal canadien du commerce extérieur en déposant par écrit un avis d'appel auprès du sous-ministre et du secrétaire de ce Tribunal dans les quatre-vingt-dix jours suivant la notification de l'avis de décision.

Publication de l'avis d'appel

(2) Avant de se prononcer sur l'appel prévu par le présent article, le Tribunal canadien du commerce extérieur tient une audience sur préavis d'au moins vingt et un jours publié dans la *Gazette du Canada*, et toute personne peut être entendue à l'appel si, au plus tard le jour de l'audience, elle a remis un acte de comparution au secrétaire de ce Tribunal.

Recours judiciaire

(3) Le Tribunal canadien du commerce extérieur peut statuer sur l'appel prévu au paragraphe (1), selon la nature de l'espèce, par ordonnance, constatation ou déclaration, celles-ci n'étant susceptibles de recours, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues à l'article 68.

L.R. (1985), ch. 1 (2^{e} suppl.), art. 67, ch. 47 (4^{e} suppl.), art. 52.

with except to the extent and in the manner provided by section 68.

R.S., 1985, c. 1 (2nd Supp.), s. 67, c. 47 (4th Supp.), s. 52.

Appeal to Federal Court

68. (1) Any of the parties to an appeal under section 67, namely,

(*a*) the person who appealed,

(*b*) the Deputy Minister, or

(*c*) any person who entered an appearance in accordance with subsection 67(2),

may, with leave of a judge of the Federal Court, within ninety days after the date a decision is made under section 67, appeal therefrom to that Court on any question of law.

Disposition of appeal

(2) The Federal Court may dispose of an appeal by making such order or finding as the nature of the matter may require or by referring the matter back to the Canadian International Trade Tribunal for re-hearing.

R.S., 1985, c. 1 (2nd Supp.), s. 68, c. 47 (4th Supp.), s. 52.

Refund pending appeal

69. (1) Where an appeal is taken under section 67 or 68 in respect of goods and the person who appeals has paid any amount as duties in relation to those goods, that person shall, on giving security satisfactory to the Minister in respect of the unpaid portion of the duties owing and the whole or any portion of the amount paid as duties on the goods, be given a refund of the whole or any portion of the amount paid in respect of which security is given.

Interest

(2) Where a refund is given under subsection (1), the person who is given the refund shall

(*a*) if a re-determination or re-appraisal is made by the Deputy Minister under paragraph 64(*d*) pursuant to which any portion of the amount refunded is owing as duties, pay interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month after the refund is given during which any amount of the refund found to be owing as duties remains outstanding, calculated on the amount outstanding; or

(*b*) if a re-determination or re-appraisal is made by the Deputy Minister under paragraph 64(*d*) pursuant to which all or any portion of the amount refunded is not owing as duties, be given interest at the prescribed rate or at a rate determined in the prescribed

68. (1) La décision sur l'appel prévu à l'article 67 est, dans les quatre-vingt-dix jours suivant la date où elle est rendue et avec l'autorisation d'un juge de la Cour fédérale, susceptible de recours devant celle-ci, sur tout point de droit, de la part de toute partie à l'appel, à savoir :

Recours devant la Cour fédérale

a) l'appelant;

b) le sous-ministre;

c) quiconque a remis l'acte de comparution visé au paragraphe 67(2).

(2) La Cour fédérale peut statuer sur le recours, selon la nature de l'espèce, par ordonnance ou constatation, ou renvoyer l'affaire au Tribunal canadien du commerce extérieur pour une nouvelle audience.

Issue du recours

L.R. (1985), ch. 1 (2^e^ suppl.), art. 68, ch. 47 (4^e^ suppl.), art. 52.

69. (1) La personne qui interjette appel, en vertu des articles 67 ou 68, d'une décision portant sur des marchandises, après avoir versé une somme à titre de droits sur celles-ci, si elle donne la garantie, que le ministre estime indiquée, du versement de la partie impayée des droits dus et de la totalité ou d'une partie du montant versé à titre de droits sur les marchandises, est remboursée de la totalité ou d'une partie de la somme versée pour laquelle une garantie a été donnée.

Remboursement en cas d'appel

(2) Le bénéficiaire d'un remboursement prévu au paragraphe (1) :

Intérêts

a) dans les cas où, à la suite d'un réexamen effectué par le sous-ministre en vertu de l'alinéa 64*d*), une fraction de la somme remboursée devient due à titre de droits, paie des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur cette fraction par mois ou fraction de mois s'écoulant entre le remboursement et le règlement de la somme due à titre de droits;

b) dans les cas où, à la suite d'un réexamen effectué par le sous-ministre en vertu de l'alinéa 64*d*), la totalité ou fraction de la somme remboursée n'est pas due à titre de droits, reçoit des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur la somme non due à titre de droits par mois ou fraction de mois s'écoulant entre la date du

manner in respect of each month or fraction of a month between the time the amount refunded was originally paid by that person and the time it was refunded, calculated on the amount of the refund found not to be owing as duties.

Amounts under ten dollars

(3) Where interest owing under this section is less than ten dollars, no interest shall be paid.
R.S., 1985, c. 1 (2nd Supp.), s. 69, c. 1 (4th Supp.), s. 45(F).

References to Canadian International Trade Tribunal

70. (1) The Deputy Minister may refer to the Canadian International Trade Tribunal for its opinion any questions relating to the tariff classification or value for duty of any goods or class of goods.

Idem

(2) Sections 67 and 68 apply in respect of a reference made pursuant to this section as if the reference were an appeal taken pursuant to section 67.
R.S., 1985, c. 1 (2nd Supp.), s. 70, c. 47 (4th Supp.), s. 52.

Special Provisions

Special provisions for codes 9956 and 9957

71. (1) Where the release of goods has been refused on the ground that the goods have been determined to be prohibited goods as described in code 9956 or 9957 of Schedule VII to the *Customs Tariff*, re-determination may be requested under sections 60 and 63 or made under section 64 and appeals may be taken under sections 67 and 68 in respect of the determination, subject to the following modifications:

(*a*) paragraphs 64(*d*) and (*e*) shall be deemed to include a reference to the court; and

(*b*) in sections 67 and 68, the expression "court" shall be deemed to be substituted for the expression "Canadian International Trade Tribunal" and the expression "clerk of the court" shall be deemed to be substituted for the expression "Secretary of the Canadian International Trade Tribunal".

Definitions

(2) In this section,

"clerk of the court" «*greffier*...»

"clerk of the court" means the clerk of the Supreme Court, Ontario Court (General Division), Superior Court, Court of Queen's Bench or county or district court, as the case may be;

"court" «*tribunal*»

"court" means

versement de cette somme à titre de droits et celle de son remboursement.

Minimum

(3) Il n'est tenu aucun compte des intérêts dus en application du présent article dont le montant est inférieur à dix dollars.
L.R. (1985), ch. 1 (2ᵉ suppl.), art. 69, ch. 1 (4ᵉ suppl.), art. 45(F).

Consultation du Tribunal canadien du commerce extérieur

70. (1) Le sous-ministre peut consulter le Tribunal canadien du commerce extérieur sur toute question se rapportant au classement tarifaire ou à la valeur en douane de toute marchandise ou catégorie de marchandises.

Idem

(2) Les articles 67 et 68 s'appliquent aux consultations visées au présent article comme s'il s'agissait des appels visés à l'article 67.
L.R. (1985), ch. 1 (2ᵉ suppl.), art. 70, ch. 47 (4ᵉ suppl.), art. 52.

Dispositions spéciales

Disposition spéciale pour les marchandises prohibées

71. (1) En cas de refus de dédouanement de marchandises fondé sur une décision de classement parmi les marchandises prohibées visées aux codes 9956 et 9957 de l'annexe VII du *Tarif des douanes*, cette décision peut faire l'objet des révisions ou réexamens prévus aux articles 60, 63 et 64, ainsi que des appels ou recours prévus aux articles 67 et 68, sous réserve des modifications suivantes :

a) les alinéas 64*d*) et *e*) sont réputés faire mention du tribunal;

b) aux articles 67 et 68, les expressions «tribunal» et «greffier du tribunal» sont réputées remplacer respectivement les expressions «Tribunal canadien du commerce extérieur» et «secrétaire du Tribunal canadien du commerce extérieur».

Définitions

(2) Les définitions qui suivent s'appliquent au présent article.

«greffier du tribunal» "*clerk*..."

«greffier du tribunal» Selon le cas, le greffier de la Cour suprême, de la Cour de l'Ontario (Division générale), de la Cour supérieure, de la Cour du Banc de la Reine ou de la cour de district ou de comté.

(*a*) in the Province of Quebec, the Superior Court,

(*a*.1) in the Province of Ontario, the Ontario Court (General Division),

(*b*) in the Provinces of British Columbia and Prince Edward Island, the Yukon Territory and the Northwest Territories, the Supreme Court,

(*c*) in the Provinces of New Brunswick, Manitoba, Alberta and Saskatchewan, the Court of Queen's Bench, and

(*d*) in the Province of Nova Scotia, the county or district court for the county or district in which the customs office is situated or in which the importer or owner resides or carries on business.

R.S., 1985, c. 1 (2nd Supp.), s. 71, c. 41 (3rd Supp.), s. 120, c. 47 (4th Supp.), s. 52; 1990, c. 16, s. 8, c. 17, s. 16.

Limitation relating to security

72. No security may be given under paragraph 58(2)(a), 62(1)(a) or 65(1)(a) or subsection 69(1) in respect of any amount owing as surtaxes levied under section 59 or 60 of the *Customs Tariff*, temporary duties levied under section 60.1 or 60.2 of that Act or surcharges levied under section 61 of that Act.

R.S., 1985, c. 1 (2nd Supp.), s. 72, c. 41 (3rd Supp.), s. 121; 1988, c. 65, s. 71.

Request for re-determination where retroactive order

72.1 (1) Notwithstanding paragraphs 60(1)(*a*) and (*b*), a request for a re-determination of the tariff classification of imported goods affected by a retroactive order of the Governor in Council made pursuant to sections 68 and 136 or 129 and 136 of the *Customs Tariff*, may be made under section 60 at any time before July 1, 1992.

Previous re-determination not a bar

(2) A designated officer may re-determine under subsection 60(3), and thereafter the Deputy Minister may further re-determine under subsection 63(3), the tariff classification of imported goods in order to give effect to a retroactive order of the Governor in Council referred to in subsection (1), notwithstanding any prior re-determination of the tariff classification of the goods.

1990, c. 36, s. 1.

«tribunal» "court"

«tribunal»

a) Dans la province de Québec, la Cour supérieure;

a.1) dans la province d'Ontario, la Cour de l'Ontario (Division générale);

b) dans les provinces de la Colombie-Britannique et de l'Île-du-Prince-Édouard, le territoire du Yukon et les Territoires du Nord-Ouest, la Cour suprême;

c) dans les provinces du Nouveau-Brunswick, du Manitoba, d'Alberta et de la Saskatchewan, la Cour du Banc de la Reine;

d) dans la province de la Nouvelle-Écosse, la cour de comté ou de district dans le ressort de laquelle se situent soit le bureau de douane, soit la résidence ou l'établissement de l'importateur ou du propriétaire.

L.R. (1985), ch. 1 (2ᵉ suppl.), art. 71, ch. 41 (3ᵉ suppl.), art. 120, ch. 47 (4ᵉ suppl.), art. 52; 1990, ch. 16, art. 8, ch. 17, art. 16.

Restriction relative aux garanties

72. Il ne peut pas être donné de garanties en application des alinéas 58(2)*a*), 62(1)*a*) ou 65(1)*a*) ou du paragraphe 69(1) pour des montants dus à titre de surtaxes prévues aux articles 59 ou 60 du *Tarif des douanes*, de droits temporaires prévus aux articles 60.1 ou 60.2 de cette loi ou de surcharges prévues à l'article 61 de la même loi.

L.R. (1985), ch. 1 (2ᵉ suppl.), art. 72, ch. 41 (3ᵉ suppl.), art. 121; 1988, ch. 65, art. 71.

Demande de révision lors d'un décret rétroactif

72.1 (1) Par dérogation aux alinéas 60(1)*a*) et *b*), une demande de révision du classement tarifaire de marchandises importées touché par un décret rétroactif pris par le gouverneur en conseil en vertu des articles 68 et 136 ou 129 et 136 du *Tarif des douanes* peut, avant le 1ᵉʳ juillet 1992, être présentée en vertu de l'article 60.

Révision et réexamen antérieurs

(2) L'agent désigné peut, en vertu du paragraphe 60(3), procéder à la révision du classement tarifaire de marchandises importées — et le sous-ministre peut par la suite procéder au réexamen visé au paragraphe 63(3) — afin de donner effet à un décret rétroactif mentionné au paragraphe (1) même si le classement tarifaire des marchandises a déjà fait l'objet d'une révision ou d'un réexamen antérieur, selon le cas.

1990, ch. 36, art. 1.

Court File No. 619/90

GLAD DAY BOOKSHOP INC. and
JEARLD MOLDENHAUER

Appellants

and

DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

Proceedings commenced at
Toronto

FACTUM OF THE RESPONDENT DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE

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